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Idaho Code Commission

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COMMISSIONERS

TITLE 54

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.

Idaho Evidence Rule

Idaho R. Crim. P.

Idaho Misdemeanor Crim. Rule

I.I.R.

I.J.R.

I.C.A.R.

Idaho App. R.

Idaho Rules of Civil Procedure

Idaho Rules of Evidence

Idaho Criminal Rules

Misdemeanor Criminal Rules

Idaho Infraction Rules

Idaho Juvenile Rules

Idaho Court Administrative Rules

Idaho Appellate Rules

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.



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ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2013	April 4, 2013
2014	March 20, 2014

TITLE 54

PROFESSIONS, VOCATIONS, AND BUSINESSES

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20. IDAHO REAL ESTATE LICENSE LAW, §§ 54-2004, 54-2018, 54-2022, 54-2023, 54-2025, 54-2026, 54-2028, 54-2059.
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41. IDAHO REAL ESTATE APPRAISERS ACT, §§ 54-4105, 54-4106.
45. PUBLIC WORKS CONSTRUCTION MANAGEMENT LICENSING ACT, §§ 54-4503, 54-4511, 54-4512.
47. ACUPUNCTURE, § 54-4702.
50. INSTALLATION OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS, § 54-5015.
51. NATUROPATHIC PHYSICIANS LICENSING ACT, § 54-5110.
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CHAPTER 3

ARCHITECTS

SECTION.

- 54-302. Qualifications for examination and license.
- 54-303. Regular examinations.
- 54-305. Grounds for discipline — Judicial review — Penalties — Subsequent license.

SECTION.

- 54-307. License is individual.
- 54-308. Licensed architect's seal.
- 54-316. Foreign partnership and corporate practice. [Repealed.]

54-302. Qualifications for examination and license. — (1) A person applying for examination shall submit satisfactory evidence of the following to the board of architectural examiners:

(a) Graduation from an accredited architectural curriculum in a school or college approved by the board of architectural examiners as of satisfactory standing, and a specific record of having started or completed experience in architectural work in an internship setting of a character deemed satisfactory by the board, by rule indicating that the applicant is competent to practice architecture; or

(b) That the applicant has attained standards, as the board may adopt by rule, of knowledge and skill approximating that attained through graduation from an accredited architectural curriculum, and a specific record of eight (8) years or more of experience in architectural work of a character deemed satisfactory by the board by rule, indicating that the applicant is competent to practice architecture, and a specific record of having started or completed experience in architectural work in an internship setting of a character deemed satisfactory by the board.

(2) A person is qualified for all examination divisions once they have met the graduation requirement and started the internship program as defined in the board rules or met the eight (8) years of experience requirement as approved by the board and started the internship program as defined in the board rules.

(3) A person is qualified for a license once they have established a specific record of successful passage of all examination divisions and the completion of experience in architectural work in an internship setting of a character deemed satisfactory by the board.

(4) The board may adopt, by rule, as its own standards for education and experience, the guidelines published by the national council of architectural registration boards.

History.

I.C., § 54-302, as added by 1961, ch. 161, § 4, p. 232; am. 1974, ch. 13, § 26, p. 138; am.

1976, ch. 166, § 1, p. 596; am. 1983, ch. 245, § 1, p. 659; am. 2009, ch. 76, § 1, p. 213; am. 2014, ch. 158, § 1, p. 441.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 158, deleted “an additional three (3) years or more of” following “having started or completed” in paragraphs (1)(a) and (1)(b); and deleted “three (3) years or more of” following “completion of” in subsection (3).

Compiler’s Notes.

For more on the national council of architectural registration boards, see <http://www.ncarb.org>.

54-303. Regular examinations. — The bureau of occupational licenses shall facilitate examinations for a license to practice architecture, if there be any such applicants. The examinations shall be approved by the board of architectural examiners and be administered using fair and wholly impartial methods and subject to such rules as the board may establish to test the applicant’s qualifications in all branches of the professional practice of architecture with special reference to the structural stability of buildings and the protection of life, health, and property. The board may adopt, by rule, the examinations and recommended grading procedures of the national council of architectural registration boards.

History.

I.C., § 54-303, as added by 1961, ch. 161, § 6, p. 232; am. 1974, ch. 13, § 27, p. 138; am.

1982, ch. 300, § 1, p. 761; am. 1983, ch. 245, § 3, p. 659; am. 2006, ch. 127, § 1, p. 365; am. 2014, ch. 158, § 2, p. 441.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 158, in the second sentence, substituted "approved by the board" for "conducted by the board" and "and be administered using fair and wholly impartial methods" for "under fair and wholly impartial methods".

Compiler's Notes.

For more on the national council of architectural registration boards, see <http://www.ncarb.org>.

54-305. Grounds for discipline — Judicial review — Penalties — Subsequent license. — (1) The board may refuse to grant, or may temporarily suspend or otherwise restrict a license to practice architecture in this state for a period not to exceed two (2) years, or may revoke a license, upon any one (1) of the following grounds:

- (a) The employment of any fraud or deception in applying for a license or in passing the examination required under this chapter.
- (b) The employment of a fraud or deceit in the practice of his profession or procuring any contract in the practice of his profession by fraudulent means.
- (c) A display of incompetency or recklessness in the practice of architecture resulting in a detriment to life, health, or public safety.
- (d) The conviction, finding of guilt, receipt of a withheld judgment or suspended sentence in this or any other state for a felony or a misdemeanor, which misdemeanor involved a violation of the provisions of this chapter, a willful violation of state or local building codes, or a violation of other laws relating to public health and safety and which were committed in the course of practicing architecture.
- (e) Affixing of his signature to, or impressing his seal upon, any plans, drawings, specifications, or other instruments of service which have not been prepared by him, or under his responsible control, or has permitted his name to be used for the purpose of assisting any person, not a licensed architect, to evade the provisions of this chapter.
- (f) Receiving of rebates, commissions, grants of money or other favors in connection with the work, without the knowledge of the party for whom he is working, or having a pecuniary interest in the performance of the contract for the work designed, planned or supervised by him without the knowledge and consent of the owner.
- (g) Practicing architecture contrary to the provisions and requirements of this chapter.
- (h) Violation of rules of conduct for architects which the board may adopt in accordance with guidelines published by the national council of architectural registration boards.
- (i) Practicing architecture without being licensed, in violation of licensing laws of the jurisdiction in which the practice took place.
- (j) Has had a license, certificate or registration to practice architecture revoked, suspended or otherwise disciplined in any jurisdiction.
- (k) Failure to comply with a board order entered in a disciplinary action.

(2) Before any license shall be revoked or suspended, or the issuance thereof denied under subsection 3. of section 54-302A, Idaho Code, the

holder or applicant shall be entitled to at least twenty (20) days' notice in writing of the nature of the charge against him and of the time and place of the hearing before the board for the purpose of hearing and determining such charge. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any revocation or suspension of license shall be certified in writing by the board and attested to with the official seal of the board affixed thereto; and such revocation or suspension of license shall be filed in the office of the bureau of occupational licenses.

(3) Any person aggrieved by the action of the board is entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

(4) Upon the finding of the existence of grounds for discipline of any person holding a license, seeking a license, or renewing a license under the provisions of this chapter, the board may impose one (1) or more of the following penalties:

- (a) Suspension of the offender's license for a term to be determined by the board;
- (b) Revocation of the offender's license;
- (c) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of architecture in a particular manner for a term to be determined by the board;
- (d) Refusal to renew the offender's license;
- (e) Placement of the offender on probation and supervision by the board for a period to be determined by the board;
- (f) Imposition of an administrative fine not to exceed two thousand dollars (\$2,000).

(5) Any person whose license has been revoked, suspended or the issuance of which has been denied by said board for cause and the order denying, revoking or suspending the same not having been revoked by a court of competent jurisdiction, may apply for a reissuance, reinstatement or issuance of a license and the board, for reasons it may deem sufficient, may reissue, reinstate or issue the license to such person, provided however, that it shall not take such action until the expiration of one (1) year after the date of such order.

History.

I.C., § 54-305, as added by 1961, ch. 161, § 8, p. 232; am. 1974, ch. 13, § 29, p. 138; am. 1983, ch. 245, § 5, p. 659; am. 1989, ch. 339, § 1, p. 856; am. 1991, ch. 30, § 10, p. 58; am. 1993, ch. 216, § 50, p. 587; am. 2006, ch. 127, § 2, p. 365; am. 2014, ch. 158, § 3, p. 441.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 158, substituted "this chapter" for "this act" in para-

graph (1)(d) and added paragraphs (1)(j) and (1)(k).

54-307. License is individual. — (1) Every person practicing or offering to practice architecture as herein defined, and not otherwise exempted, shall have a separate license under his own name. A license shall not be issued in the name of any firm or corporation.

(2) The holder of a license shall not maintain, in the practice of architecture, any person who does not hold a license to practice architecture in this state, unless such unlicensed person works under the responsible control of his licensed supervisor.

History.

I.C., § 54-307, as added by 1961, ch. 161, § 10, p. 232; am. 1974, ch. 13, § 31, p. 138; am. 1978, ch. 125, § 1, p. 283; am. 1983, ch. 245, § 6, p. 659; am. 2006, ch. 127, § 3, p. 365; am. 2014, ch. 158, § 4, p. 441.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 158, deleted “Firm name” from the end of the section heading; substituted “exempted” for “ex-

cepted” in subsection (1); and deleted former subsection (3), relating to licensing provisions for firm names.

54-308. Licensed architect's seal. — (1) Every licensed architect shall have a seal, the impression of which must contain the name and Idaho architect license number of the architect and the words “licensed architect” and “state of Idaho,” with which he shall seal all technical submissions issued from his office.

(2) The seal, signature and date may be manually or electronically applied. Whenever the seal is applied to a technical submission, the signature of the architect and the date thereof shall be written adjacent to or across the seal. The signature, date and seal shall appear on all technical submissions prepared by the architect or that meet the requirements set forth in subsection (4) of this section. Only the title page of reports, specifications and like documents must bear the date and the seal and signature of the architect. It is the responsibility of the architect sealing the document to provide adequate security when documents with electronic seals are distributed. Electronically produced documents distributed for informational uses, such as for bidding purposes or as working copies, may be issued with only the architect's seal if:

- (a) The copy includes a notice that the original document is on file with the date and architect's signature;
- (b) The words “original signed by” and “date original signed” are placed adjacent to or across the seal on the electronic document; and
- (c) The storage location of the original document is identified.

The design and use of the seal shall be as required by board rule.

(3) Technical submissions involving the practice of architecture which are submitted to any public or governmental agency for the purpose of obtaining a building permit which are not clearly identified by the affixed seal of the architect and the signature of the architect and date thereof shall be deemed unacceptable submissions for the purpose of obtaining such building permit.

(4) An architect may sign and seal technical submissions only if the technical submissions were:

- (a) Prepared by the architect;
- (b) Prepared by persons under the architect's responsible control;
- (c) Prepared by another architect licensed in Idaho if the signing and sealing architect has reviewed the other architect's work and either has

coordinated the preparation of the work or has integrated the work into his or her own technical submissions; or

(d) Prepared by another architect licensed in any state and holding the certification issued by the national council of architectural registration boards if:

(i) The signing and sealing architect has reviewed the other architect's work and has integrated the work into his or her own technical submissions; and

(ii) The other architect's technical submissions are prototypical building documents.

(5) An architect may sign and seal drawings, specifications or other work that is not required to be prepared by an architect if the architect has reviewed such work and has integrated it into his or her own technical submissions.

(6) Any licensed architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident shall maintain and make available to the board upon request, for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. Any licensed architect signing or sealing technical submissions integrating the work of another architect into the registered architect's own work as permitted under subsection (4)(c) or (d) of this section shall maintain and make available to the board upon request for at least five (5) years following such signing and sealing adequate and complete records demonstrating the nature and extent of the registered architect's review of and integration of the work of such other architect's work into his or her own technical submissions and that such review and integration met the required professional standard of care.

History.

1917, ch. 116, § 17, p. 397; reen. C.L. 92:17; C.S., § 2229; I.C.A., § 53-408; am. 1989, ch. 339, § 2, p. 856; am. 2001, ch. 88, § 1, p. 225; am. 2006, ch. 127, § 4, p. 365; am. 2014, ch. 158, § 5, p. 441.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 158, rewrote subsection (2) relating to licensed architects'

seals and signatures and deleted "original" preceding "signature" in subsection (3).

54-316. Foreign partnership and corporate practice. [Repealed.]

Repealed by S.L. 2014, ch. 158, § 6, effective July 1, 2014.

History.

I.C., § 54-316, as added by 1983, ch. 245, § 10, p. 659.

CHAPTER 4

STATE ATHLETIC COMMISSION

SECTION.

54-406. Duties of commission — Sanctioning permits — Licensing — Exemptions — Medical certification.

SECTION.

54-411. Statement and report of event — Tax on gross receipts.

54-406. Duties of commission — Sanctioning permits — Licensing — Exemptions — Medical certification. — (1) The commission shall have power, and it shall be its duty, to direct, supervise and control all amateur and professional contests and exhibitions within the state and no such contest or exhibition shall be held or given within this state except in accordance with the provisions of this chapter. The commission has authority to adopt rules to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission including, but not limited to:

- (a) Development of an ethical code of conduct for commissioners, commission staff and commission officials;
- (b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches;
- (c) Requirements regarding a participant's apparel, bandages, handwraps, gloves, mouthpiece and appearance during a match;
- (d) Requirements relating to a manager's participation, presence and conduct during a match;
- (e) Duties and responsibilities of all licensees under this chapter;
- (f) Procedures for hearings and resolution of disputes, including the commission's recovery of its costs and fees incurred from an unsuccessful challenger of a contest decision as well as a deposit in an amount determined by the commission;
- (g) Qualifications for appointment of referees and judges;
- (h) Designation and duties of a knockdown timekeeper;
- (i) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission;
- (j) Establishment of criteria for approval, disapproval, suspension of approval and revocation of approval of amateur sanctioning organizations for amateur contests and exhibitions held in this state including, but not limited to, the health and safety standards the organizations use before, during and after the matches to ensure the health, safety and well-being of the amateur combatants participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety and well-being of the amateur combatants participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of

United States amateur boxing, inc., as the minimum health and safety standards for an amateur boxing sanctioning organization, and the health and safety standards of the international amateur kickboxing sport association as the minimum health and safety standards for an amateur kickboxing sanctioning organization; and

(k) Establish fees to be paid by an amateur athletic sanctioning organization that is approved pursuant to subsection (3)(b)(ii) of this section, which fees shall include:

(i) Initial and annual application processing fees of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000); and

(ii) Initial and annual approval fees of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000).

(2) The commission may, in its discretion, issue or refuse to issue and for cause immediately revoke any sanctioning permit whether or not an admission fee is charged by any person, organization, association or fraternal society. The commission may also, in its discretion, issue or refuse to issue and for cause immediately revoke, suspend or otherwise discipline licenses for participants of sanctioned contests and exhibitions. The commission may recover the costs and fees incurred in the investigation and prosecution of a licensee or permit holder who is found in violation of the provisions of this chapter or the commission's rules.

(3) Specifically exempt from the provisions of this chapter are all contests or exhibitions that:

(a) Are contests or exhibitions conducted by any secondary school, college or university, whether public or private, where all the participating contestants are bona fide students enrolled in any secondary school, college or university, within or without this state;

(b) Are entirely contests or exhibitions in which all combatants are amateurs and which have been sanctioned as amateur athletic contests or exhibitions by any of the following associations:

(i) United States amateur boxing, inc., also known as USA boxing, inc., the amateur athletic union of the United States, inc., also known as the national amateur athletic union, the amateur athletic union and the AAU or any similar nationally recognized entity approved by the commission; or

(ii) Any other entity that the commission approves to be an amateur athletic sanctioning organization, which approval shall be subject to annual review for purposes of renewal. Notwithstanding any other provision of this chapter, the promoter of any contest or exhibition sanctioned by an organization approved pursuant to this subparagraph shall comply with sections 54-408, 54-411, 54-413, 54-417, 54-419, 54-421 and 54-422, Idaho Code, and the promoter and each participant in such contest or exhibition are subject to sections 54-416, 54-418 and 54-420, Idaho Code, unless specifically exempted by commission rule;

(c) Are contests or exhibitions held under the auspices or sanction of an established nonprofit secondary school activities organization or of its public or nonprofit accredited secondary school members, or held under

the auspices or sanction of an established college or university activities organization or its public or not-for-profit accredited college or university members; or

(d) Are contests or exhibitions conducted by any military installation or branch of the United States armed forces, or the state national guard, where the participants are employed by the military installation, are members of the branch of the armed forces, or the state national guard unit conducting the contest or exhibition.

(4) Provided further that every combatant in any contest or exhibition exempt under the provisions of this chapter, prior to engaging in and conducting such contest or exhibition, shall be examined by a licensed physician at least once in each calendar year, or where such contest is conducted by a secondary school, college or university or organization as further described in this section, once in each academic year in which instance the physician shall also designate the maximum and minimum weights at which the combatant shall be medically certified to participate. Provided further that no combatant shall be permitted to participate in any such contest or exhibition in any weight classification other than that or those for which he is certificated. Provided further that the exempted organizations shall be governed by the provisions of section 54-414, Idaho Code, as that section applies to contests or exhibitions conducted by persons exempted in this section from the general provisions of this chapter. No contest or exhibition shall be conducted within this state except pursuant to a license issued in accordance with the provisions of this chapter and the rules of the commission except as hereinabove provided.

History.

I.C., § 54-406, as added by 1992, ch. 229, § 2, p. 679; am. 2004, ch. 385, § 6, p. 1147;

am. 2007, ch. 149, § 6, p. 444; am. 2009, ch. 93, § 3, p. 270; am. 2010, ch. 311, § 2, p. 831; am. 2013, ch. 345, § 1, p. 929.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 345, added "including the commission's recovery of its costs and fees incurred from an unsuccessful challenger of a contest decision as well as a deposit in an amount determined by the commission" at the end of paragraph (1)(f) and added the last sentence in subsection (2).

Compiler's Notes.

For more on United States amateur boxing, inc., also known as USA boxing, inc., see <http://usaboxing.org>.

The international amateur kickboxing sport associating, referred to in paragraph (1)(j), merged into the world association of kickboxing organizations (WAKO) in 2006. See <http://www.wakoweb.com>.

For more information on the amateur athletic union of the United States, inc., or AAU, see <http://aausports.org>.

Effective Dates.

Section 3 of S.L. 2013, ch. 345 declared an emergency. Approved April 11, 2013.

54-411. Statement and report of event — Tax on gross receipts. —

(1) Any promoter as herein provided shall, at least seven (7) days prior to the holding of any contest or exhibition, file with the commission a statement setting forth the name of each combatant, his manager or managers, the total number of tickets available for the contest or exhibition and such other information as the commission may require. The promoter shall pay to the commission at the time of the sanctioning permit applica-

tion an initial event tax of one thousand dollars (\$1,000). Within seventy-two (72) hours after the termination of any contest or exhibition the promoter shall file with the commission representative a gross receipts report, duly verified as the commission may require showing the number of tickets sold for such contest or exhibition, the price charged for such tickets and the gross receipts thereof without any deduction whatsoever, and such other and further information as the commission may require. If the initial event tax previously paid is less than nine percent (9%) of the gross receipts for the event, then the promoter shall pay to the commission at the time of filing the above report an additional event tax equal to nine percent (9%) of the gross receipts, minus the initial event tax previously paid, for deposit by the commission.

(2) All tickets for any contest or exhibition shall be issued, sold and distributed by an independent ticket distributor or broker not associated with the promoter and not associated with the venue unless approved by the commission. The number of complimentary tickets shall be limited to two percent (2%) of the total tickets sold per event location. All complimentary tickets exceeding this set amount shall be subject to taxation. The promoter shall limit the number of persons admitted to the event to the number of available tickets that are actually sold, given away or otherwise issued for the event.

(3) Gross receipts reports signed under oath shall also include:

- (a) The name of the promoter;
- (b) The contest or exhibition sanctioning permit number;
- (c) The promoter's business address and any license or sanctioning permit number required of such promoter by law;
- (d) Gross receipts as specified by this section, during the period specified by this section; and
- (e) Such further information as the commission may require to enable it to compute correctly and collect the assessment levied pursuant to this section.

(4) In addition to the information required on gross receipts reports, the commission may request, and the promoter shall furnish, any information deemed necessary for a correct computation of the assessment levied pursuant to this section.

(5) All levies pursuant to this section shall be collected by the commission and shall be deposited in the state treasury to the credit of the occupational licenses fund [account].

(6) The moneys collected from the assessment levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the commission.

(7) The promoter shall compute and pay to the commission the required assessment due. If the payment of the assessment is not postmarked or delivered to the commission as specified in subsection (1) of this section, the assessment shall be delinquent from such date. In addition, if the promoter has not paid the initial event tax as provided in subsection (1) of this section, the promoter shall not hold the event.

(8) Of the moneys collected by the commission pursuant to the tax authorized in subsection (1) of this section, up to five percent (5%) of said tax

may be used by the commission for the promotion and support of amateur contests and exhibitions in this state. All parties interested in receiving a distribution must submit an application to the commission which shall include the name of the person or entity applying and a detailed description of what the applicant intends to do with the distribution if granted. The commission shall consider all applications and assign distributions, if any, at the end of each fiscal year to those applicants the commission deems most qualified. The commission may make such distributions only if the commission has a positive balance within the occupational licenses fund [account] and sufficient revenue to cover its projected expenses for the upcoming year.

(9) It shall be the duty of every promoter required to make a gross receipts report and pay any assessment pursuant to the provisions of this section to keep and preserve suitable records and documents which may be necessary to determine the amount of assessment due as will substantiate and prove the accuracy of such reports. All such records shall be preserved for a period of three (3) years, unless the commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the commission or by its authorized agents.

(10) In the event the state athletic commission's debt owed to the bureau of occupational licenses exceeds two hundred thousand dollars (\$200,000), the commission's operations will be suspended, including issuance of licenses and permits. In order for the commission's operations to be reinstated all outstanding debt owed to the bureau of occupational licenses must be paid in full.

History.

I.C., § 54-409, as added by 1992, ch. 229, § 2, p. 679; am. and redesig. 2004, ch. 385, § 11, p. 1147; am. 2007, ch. 149, § 8, p. 444;

am. 2008, ch. 113, § 1, p. 317; am. 2009, ch. 93, § 7, p. 270; am. 2010, ch. 311, § 5, p. 831; am. 2013, ch. 345, § 2, p. 929.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

sentence; added the first sentence in subsection (2); and added subsection (10).

Amendments.

The 2013 amendment, by ch. 345, in subsection (1), substituted "pay to the commission at the time of the sanctioning permit application an initial event tax of one thousand dollars (\$1,000)" for "simultaneously pay to the commission an initial event tax of four hundred dollars (\$400)" at the end of the first sentence, and substituted "nine percent (9%)" for "five percent (5%)" two times in the last

Compiler's Notes.

The bracketed insertions at the end of subsection (5) and near the end of subsection (8) were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 3 of S.L. 2013, ch. 345 declared an emergency. Approved April 11, 2013.

CHAPTER 6**PODIATRISTS****SECTION.**

54-604. Establishment of state board of podiatry.

SECTION.

54-605. Powers and duties of state board of podiatry.

SECTION.

54-606. State board of podiatry — Examination for licenses.

54-607. Licenses — Issuance — Renewals — Display.

54-608. Grounds for suspension, denial, re-

SECTION.

fusal to renew or revocation of license.

54-610. Proceedings for suspension, revocation or other discipline of license.

54-604. Establishment of state board of podiatry. — (1) There is hereby established in the department of self-governing agencies a state board of podiatry to be composed of five (5) members to be appointed by the governor in the manner hereinafter set forth. Four (4) members shall be podiatrists, duly licensed under the laws of the state of Idaho, and who shall have been continuously engaged in the practice of podiatry for a period of not less than five (5) years prior to his appointment. The fifth member of the board shall be a layman, a resident of the state of Idaho for a period of not less than five (5) years prior to his appointment. All appointments to the board shall be made for terms of four (4) years. Vacancies on the board, occurring for any reason, shall be filled by the governor. The governor in making appointments shall give consideration to but shall not be bound by the recommendations received from the Idaho podiatric medical association.

(2) The board shall select a chairman and a vice chairman annually. The chairman shall be a podiatrist. The board shall meet at least annually for the purpose of transacting any business which may lawfully come before it. The board may meet in special session at the call of the chairman, or at the call of not less than two-thirds (2/3) of the membership of the board. The members of the board shall each be compensated as provided by section 59-509(m), Idaho Code.

(3) Examinations of applicants may be conducted by the board or by designated representatives of the board.

(4) A quorum will consist of at least three (3) members of the board. The chairman, or person acting as such, will vote only in the case of a tie.

History.

1957, ch. 143, § 4, p. 235; am. 1965, ch. 201, § 1, p. 446; am. 1969, ch. 464, § 5, p. 1304; am. 1974, ch. 13, § 53, p. 138; am. 1976, ch. 361, § 4, p. 1184; am. 1980, ch. 247, § 53, p.

582; am. 1990, ch. 36, § 1, p. 53; am. 1997, ch. 27, § 1, p. 43; am. 2000, ch. 41, § 1, p. 81; am. 2008, ch. 16, § 1, p. 22; am. 2014, ch. 101, § 1, p. 297.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 101, added the subsection designations; deleted the former fourth and fifth sentences in subsection (1), which read: "With reference to the first board, the four (4) podiatrists shall be appointed for terms of one (1), two (2), three (3) and four (4) years, respectively. The lay board member shall be appointed for a term of three (3) years", and rewrote the first three sentences in subsection (2), which formerly read: "Within thirty (30) days from the appoint-

ment of the board by the governor, the board shall organize itself, select a chairman, a vice chairman and secretary. The chairman and the secretary shall be podiatrists. The board shall meet annually for the purpose of conducting examinations and transacting any other business which may lawfully come before it".

Compiler's Notes.

For more on the Idaho podiatric medical association, see <http://podiatryinidaho.org>.

54-605. Powers and duties of state board of podiatry. — The state board of podiatry, herein referred to as the board, shall have the following powers:

(1) To approve examinations to ascertain the qualifications and fitness of applicants to practice podiatry; to pass upon the qualifications of applicants for licenses by endorsement; and to establish, by rule, the specific examinations to be required of each applicant for licensure.

(2) To prescribe rules defining for the podiatrists what shall constitute a reputable school, college or university, or department of a university or other institution in good standing, and to determine the reputability of good standing of a school, college or university, or department of a university or other institution, by reference to compliance with such rules.

(3) To establish a standard of preliminary education deemed requisite for admission to a school, college or university teaching podiatry, and to require satisfactory proof of the enforcement of such standards by schools, colleges and universities.

(4) To prescribe rules for a fair and wholly impartial method of examination of candidates to practice podiatry.

(5) To conduct hearings and proceedings for discipline of licensees as set forth in this chapter.

(6) To make and promulgate rules when required in this chapter to be administered.

(7) To make and promulgate rules prescribing the standards for the ethical practice of podiatry in the state.

(8) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

(9) To make and promulgate rules defining and requiring a podiatric residency as a condition of licensure.

(10) To promulgate rules establishing an inactive license status and an inactive license fee.

History.

1957, ch. 143, § 5, p. 235; am. 1974, ch. 13, § 54, p. 138; am. 1987, ch. 119, § 1, p. 232;

am. 1997, ch. 27, § 2, p. 43; am. 2014, ch. 101, § 2, p. 297.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 101, in subsection (1), substituted "To approve" for "To conduct" at the beginning and deleted "and the dates, times and locations of those examinations" at the end; substituted "for disci-

pline of licensees as set forth in this chapter" for "to suspend or revoke licenses of persons practicing podiatry, and to suspend or revoke such licenses for due cause" in subsection (5); substituted "this chapter" for "this act" in subsection (6); and added subsection (10).

54-606. State board of podiatry — Examination for licenses. —

(1) Every person, except as hereinafter provided, desiring to commence the practice of podiatry within this state shall make written application to the state board of podiatry upon forms to be prescribed and furnished by the board for a license so to do. Such applications shall be accompanied by a fee as established by board rule not to exceed four hundred dollars (\$400). Each applicant shall be at least twenty-one (21) years of age, of good moral

character, have completed an accredited podiatric residency as defined by board rule, and be a graduate of some reputable school of podiatry accredited by the board. A reputable school of podiatry for the purposes herein shall mean a school of podiatry requiring for graduation the graduation from an accredited high school, credits granted for at least two (2) full years of general college study in a college or university of recognized standing, and four (4) full years of study in such school of podiatry or its equivalent.

(2) Each applicant shall take and pass a competency exam approved by board rule. The examination shall test for entry level competency to provide podiatric medical services.

(3) The examination fee shall not exceed the amount charged by the board approved exam provider. The applicant shall pay the examination fee directly to the exam provider.

History.

1957, ch. 143, § 6, p. 235; am. 1969, ch. 464, § 6, p. 1304; am. 1976, ch. 361, § 5, p. 1184; am. 1982, ch. 141, § 1, p. 397; am. 1987, ch. 119, § 2, p. 232; am. 1990, ch. 36, § 2, p. 53; am. 1995, ch. 27, § 1, p. 41; am. 1997, ch. 27, § 3, p. 43; am. 2003, ch. 72, § 1, p. 237; am. 2014, ch. 101, § 3, p. 297.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 101, added the subsection designations and rewrote present

subsections (2) and (3) to the extent that a detailed comparison is impracticable.

54-607. Licenses — Issuance — Renewals — Display. — (1) If the applicant passes a satisfactory examination and shows that he is a person of good moral character and he possesses the qualifications required by this chapter to entitle him to a license as a podiatrist, he shall be entitled to a license authorizing him to practice podiatry within the state of Idaho. The successful applicant shall be issued his license by the board upon payment of the original license fee that shall be established by board rule and shall not exceed the annual renewal fee.

(2) All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. An annual renewal license fee established by board rule shall not exceed six hundred fifty dollars (\$650) for podiatrists. Payment of fees herein provided and satisfactory evidence of having complied with continued education requirements as established by board rule are conditions precedent for issuance of a license.

(3) Every person to whom a license is granted shall have such license displayed continuously in a conspicuous part of his office wherein his practice of podiatry is conducted.

(4) The board shall keep on file a register of all applicants for license, rejected applicants and licensees.

(5) The fee for reinstatement of a license shall be as provided in section

67-2614, Idaho Code. All fees shall be paid to the bureau of occupational licenses.

History.

1957, ch. 143, § 7, p. 235; am. 1965, ch. 164, § 3, p. 317; am. 1969, ch. 464, § 7, p. 1304; am. 1974, ch. 13, § 55, p. 138; am. 1976, ch. 361, § 6, p. 1184; am. 1982, ch. 141, § 2, p.

397; am. 1987, ch. 119, § 3, p. 232; am. 1997, ch. 27, § 4, p. 43; am. 1999, ch. 153, § 1, p. 427; am. 2001, ch. 26, § 1, p. 31; am. 2003, ch. 21, § 5, p. 77; am. 2009, ch. 94, § 1, p. 280; am. 2014, ch. 101, § 4, p. 297.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 101, added the subsection designations; substituted “established by board rule and shall not exceed the

annual renewal fee” for “the same fee as required for renewal” at the end of the last sentence of subsection (1).

54-608. Grounds for suspension, denial, refusal to renew or revocation of license. — No license may be issued, and a license previously issued may be suspended, revoked or otherwise disciplined, if the person applying or the person licensed is:

- (1) Found guilty by a court of competent jurisdiction of a felony or any offense involving moral turpitude;
- (2) Found by the board to be a repeated and excessive abuser of any drug, including alcohol, or any controlled substance;
- (3) Found by the board to be in violation of any provision of this chapter or the rules promulgated pursuant thereto;
- (4) Found by the board to have used fraud or deception in the procuring of any license;
- (5) Found by the board to have had any action, including denial of a license or the voluntary surrender of or voluntary limitation on a license, taken against the licensee by any peer review body, any health care institution, any professional medical society or association or any court, law enforcement or governmental agency;
- (6) Found by the board to have been unethical, unprofessional or dishonorable in the practice of healing the sick; or
- (7) Found by the board to have failed to comply with an order issued by the board.

History.

1957, ch. 143, § 8, p. 235; am. 1976, ch. 361, § 7, p. 1184; am. 1993, ch. 216, § 53, p. 587;

am. 1997, ch. 27, § 5, p. 43; am. 2014, ch. 101, § 5, p. 297.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 101, inserted “or otherwise disciplined” in the introductory

language, substituted “this chapter” for “this act” in subsection (3), and added subsection (7).

54-610. Proceedings for suspension, revocation or other discipline of license. — (1) Proceedings for the suspension, revocation or other discipline of a license shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) The board shall have the power to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire, relevant to any hearing before it of any matter which it has authority to investigate, and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of books, records or papers, directed to the sheriff of any county of the state of Idaho where such witness resides or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case. Fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, and shall be paid from any funds in the state treasury in the same manner as other expenses of the board are paid. In the event of disobedience to or neglect of any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county in this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused shall have the same right of subpoena upon making application to the board therefor.

(3) If the board shall find that the licensed person accused has violated any of the provisions of this act, the board may enter an order suspending his license for not less than thirty (30) days nor more than two (2) years. A suspended license may not be reinstated during the term of the suspension except upon order of a district court reversing the board, or upon order of the board itself after hearing new or additional evidence not available at the original proceedings. A revoked license may not be reinstated except upon order of a district court reversing the board.

History.

1957, ch. 143, § 10, p. 235; am. 1974, ch. 13, § 56, p. 138; am. 1976, ch. 361, § 9, p. 1184;

am. 1993, ch. 216, § 54, p. 587; am. 2014, ch. 101, § 6, p. 297.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 101, substituted “revocation or other discipline of license” for “or revocation of license” in the section heading; deleted language in subsection (1) related to proceedings for suspension, revocation or other discipline of a license.

Compiler’s Notes.

The words “this act” in subsection (3) refer to S.L. 1957, ch. 143, which is compiled as §§ 54-601 to 54-615.

CHAPTER 8

COSMETICIANS

SECTION.

54-802. Definitions.
54-804. Exemptions.

SECTION.

54-807. Practice of apprentice.
54-829. Board — Qualifications of members.

54-802. Definitions. — For the purpose of this chapter, the following definitions shall apply:

(1) "Cosmetology" shall constitute any one (1) or combination of the following practices when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

(a) Cutting, trimming, arranging, dressing, curling, waving by any method, cleansing, singeing, bleaching, coloring, or similar work upon the hair.

(b) Noninvasive care of the skin of the face and body by application of cosmetic preparations, antiseptics, tonics, lotions, creams and essential oils to cleanse, massage, exfoliate, hydrate and stimulate; makeup application; pore extraction; use of chemical exfoliants approved for professional esthetic use; particle exfoliation; use of any mechanical or electrical apparatus or appliance designed for nonmedical care of the skin; the temporary removal of superfluous hair by means of lotions, creams, waxing, tweezing or depilatories, and tinting of eyebrows and eyelashes.

(c) Manicuring, pedicuring the nails, and the application of artificial nails.

(2) "Registered cosmetologist" shall mean any person licensed to practice cosmetology.

(3) "Nail technology" shall constitute any one (1) or more of the following practices when done upon the human body:

(a) Manicuring, pedicuring the nails, and the application of all forms of artificial nails.

(b) Massage of the hands and feet.

(4) "Nail technician" shall mean any licensed person whose practice of cosmetology is limited to nail technology.

(5) "Nail technology instructor" shall mean a nail technologist who is licensed to teach nail technology or any practice thereof in a school of cosmetology.

(6) "Apprentice" shall mean any person registered with the board to engage in the learning or acquiring of any or all of the practices of cosmetology in a licensed cosmetological establishment, and while so learning performs or assists in any of the practices of cosmetology.

(7) "Student" shall mean any person engaged in the learning or acquiring of any or all of the practices of cosmetology in a licensed school of cosmetology, and while so learning performs or assists in any of the practices of cosmetology.

(8) "Instructor" shall mean a cosmetologist who is licensed to teach cosmetology or any practices thereof in a school of cosmetology, school or college of barbering, or cosmetology establishment meeting the requirements for apprenticeship training.

(9) "Instructor trainee" shall mean a registered cosmetologist who is in a school of cosmetology to receive training to teach cosmetology.

(10) "Cosmetological establishment" shall mean any licensed place or part thereof other than a school of cosmetology wherein cosmetology is practiced.

(11) "School of cosmetology" is a postsecondary school.

(a) Schools of cosmetology must be licensed by name by the state board of cosmetology.

(b) Schools of cosmetology admit as regular students only individuals who meet the requirements of section 54-805, Idaho Code.

(12) "Board" means the Idaho board of cosmetology.

(13) "Department" means the Idaho department of self-governing agencies.

(14) "Chapter" as used herein refers to chapter 8, title 54, Idaho Code.

(15) "Electrologist" means any person licensed to practice electrology and who is skilled in the permanent removal of unwanted hair.

(16) "Electrolysis or electrology" means the permanent removal of hair by destroying the hair producing cells of the skin and vascular system using equipment and devices approved by and registered with the United States food and drug administration.

(17) "Esthetics" means noninvasive care of the skin of the face and body by application of cosmetic preparations, antiseptics, tonics, lotions, creams and essential oils to cleanse, massage, exfoliate, hydrate and stimulate; makeup application; pore extraction; use of chemical exfoliants approved for professional esthetic use; particle exfoliation; use of any mechanical or electrical apparatus or appliance designed for nonmedical care of the skin; the temporary removal of superfluous hair by means of lotions, creams, waxing, tweezing or depilatories, and tinting of eyebrows and eyelashes.

(18) "Esthetician" means any person licensed to practice esthetics.

(19) "Esthetics instructor" shall mean an esthetician who is licensed to teach esthetics or any practice thereof in a school of cosmetology approved to teach esthetics.

(20) "Electrologist instructor" shall mean an electrologist who is licensed to teach electrology or any practices thereof in a school of cosmetology approved to teach electrology.

(21) "Student electrologist instructor" shall mean an electrologist who is in a school of cosmetology approved to teach electrology to receive training to teach electrology.

(22) "Makeover or glamour photography business" means any business engaged in the offering of photographic services to the general public and whose employees engage in the facial application of cosmetic products or the arranging of the hair of customers in connection with the sale, or attempted sale, of photographic services.

(23) "Retail cosmetics dealer" means a fixed retail business which offers cosmetic products for sale at retail to members of the general public and whose employees engage in the facial application of cosmetic products to customers in connection with the sale, or attempted sale, of the products without compensation from the customer other than the regular price of the merchandise.

(24) "Demonstration, competition or production" means an organized event of limited duration where cosmetology services may be performed, if sponsored by a salon, school of cosmetology or cosmetology-related organization.

(25) "Haircutting" means cutting, trimming, arranging, dressing, curling, cleansing, singeing or similar work upon the hair.

(26) "Haircutter" means any licensed person whose practice of cosmetology is limited to haircutting.

History.

1929, ch. 265, § 2, p. 601; I.C.A., § 53-1202; am. 1949, ch. 207, § 2, p. 433; am. 1959, ch. 281, § 2, p. 574; am. 1974, ch. 13, § 68, p. 138; am. 1976, ch. 127, § 1, p. 477; am. 1980, ch. 80, § 1, p. 168; am. 1980, ch. 81, § 1, p. 173; am. 1988, ch. 74, § 3, p. 106; am. 1989, ch. 111, § 1, p. 253; am. 1990, ch. 98, § 1, p. 202; am. 1991, ch. 124, § 1, p. 270; am. 1994, ch. 312, § 1, p. 988; am. 1997, ch. 71, § 1, p. 146; am. 1998, ch. 288, § 1, p. 921; am. 1999, ch. 175, § 1, p. 471; am. 2001, ch. 134, § 2, p. 482; am. 2006, ch. 411, § 2, p. 1242; am. 2007, ch. 48, § 1, p. 120; am. 2008, ch. 86, § 1, p. 226; am. 2011, ch. 91, § 1, p. 197; am. 2013, ch. 179, § 1, p. 415.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 179, rewrote subsection (11), which formerly read: "School of cosmetology" shall mean any licensed place or part thereof wherein cosmetology is taught to students."

Compiler's Notes.

For more on the federal food and drug

administration regulation of cosmetics, see <http://www.fda/cosmetics/default.htm>.

Effective Dates.

Section 2 of S.L. 2013, ch. 179 declared an emergency. Approved March 29, 2013.

54-804. Exemptions. — The provisions of this chapter shall not apply in the following instances:

(1) Persons authorized by the laws of this state to practice as a nurse or any of the healing arts, while in the proper discharge of their professional duties.

(2) Persons licensed to practice barbering or barber-styling in this state.

However, the provisions of this section shall not be construed to authorize the practice of cosmetology, except those acts that are permitted under the Idaho barber law.

(3) Persons practicing in their own home without compensation, and not practicing on the public in general.

(4) Persons practicing on a relative without compensation.

(5) The provisions of section 54-803(1), Idaho Code, shall not apply to licensed parties performing cosmetological services for persons unable by reason of ill health, medical confinement or involuntary incarceration to go to a cosmetological establishment.

(6) The provisions of section 54-803(1), Idaho Code, shall not apply to licensed electrologists or licensed estheticians practicing electrolysis or esthetics under the supervision of a person licensed as a chiropractor, dentist, medical doctor or podiatrist at a facility utilized by the doctor.

(7) Persons whose practice is limited to the facial application of cosmetic products to customers in connection with the sale, or attempted sale, on the premises of a retail cosmetics dealer, of cosmetic products at retail, without

compensation from the customer other than the regular price of the merchandise.

History.

1929, ch. 265, § 4, p. 601; I.C.A., § 53-1204; am. 1949, ch. 207, § 4, p. 433; am. 1959, ch. 281, § 4, p. 574; am. 1980, ch. 81, § 3, p. 173; am. 1988, ch. 74, § 4, p. 106; am. 1991, ch. 124, § 3, p. 270; am. 2003, ch. 49, § 1, p. 164; am. 2014, ch. 159, § 1, p. 446.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 159, inserted

present subsection (4) and redesignated the subsequent subsections accordingly.

54-807. Practice of apprentice. — No licensed apprentice may practice independently. A licensed apprentice may perform any and all acts necessary for the training in a profession within the scope of this chapter when such acts are performed in compliance with board rule, including immediate personal supervision of the apprentice by a licensed instructor. Cosmetological establishments employing apprentices shall keep a daily work record of the attendance of such apprentices and shall, upon the termination of such apprenticeship, certify to the board the total number of hours worked and the types of instruction given the apprentice.

History.

1929, ch. 265, § 7, p. 601; I.C.A., § 53-1207; am. 1959, ch. 281, § 7, p. 574; am. 1974, ch. 13, § 70, p. 138; am. 1976, ch. 127, § 5, p. 477; am. 1998, ch. 287, § 2, p. 918; am. 2001, ch. 134, § 5, p. 482; am. 2014, ch. 159, § 2, p. 446.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 159, rewrote

the section, revising provisions relating to the practice of licensed apprentices.

54-829. Board — Qualifications of members. — Members of the board shall be at least twenty-five (25) years of age and residents of this state for at least five (5) years prior to their appointment, and they shall have been engaged in the practice of cosmetology for at least three (3) years immediately preceding their appointment, and shall be licensed cosmetologists under the provision of this chapter. No member of the board shall be affiliated with a company selling cosmetic supplies while in office, and no two (2) members of the board can be graduates of the same school of cosmetology except that the qualifications for the cosmetology school representative and the electrologists shall be established by board rules.

History.

I.C., § 54-829, as added by 1959, ch. 281, § 28, p. 574; am. 1976, ch. 127, § 12, p. 477;

am. 1980, ch. 81, § 11, p. 173; am. 2014, ch. 159, § 3, p. 446.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 159, substituted "this chapter" for "this act" at the end of

the first sentence; in the second sentence, deleted "school of cosmetology or" preceding "company selling", and substituted "rules" for

"regulations" at the end.

CHAPTER 9

DENTISTS

SECTION.

54-903. General definitions.

54-911. Board of dentistry — Organization — Meetings — Expenses — Per diem.

54-912. Board of dentistry — Powers and duties.

54-915. Qualifications required for dentist or dental hygienist licensure.

54-916A. Dental hygiene licensure by credentials.

54-916B. Dental licensure by credentials.

SECTION.

54-918. Examinations — Certificate of qualification.

54-920. Licensing — License fees — Biennial renewal of licenses — Late fees and returned checks — Classifications of licenses — Rights of licensees — Notification of change of address.

54-924. Other grounds of refusal, revocation or suspension of dentists — Probation agreements.

54-903. General definitions. — As used in this chapter:

(1) "Association" means the Idaho state dental association and the Idaho dental hygienists' association.

(2) "Board" means the state board of dentistry.

(3) "Conviction" or "convicted" means a finding of guilt by a judge or jury, an entry of a guilty plea by a defendant and its acceptance by the court, a forfeiture of a bail bond or collateral deposited to secure a defendant's appearance, a judgment of conviction, a suspended sentence, probation, or a withheld judgment.

(4) "Dental assistant" is a person who need not be licensed under this chapter, but who is regularly employed at a dental office, who works under a dentist's supervision, and is adequately trained and qualified according to standards established by the board to perform the dental services permitted to be performed by assistants by this chapter and applicable rules of the board.

(5) "Dental hygienist" is a person both qualified and licensed by the laws of Idaho to practice dental hygiene.

(6) "Dental specialist" is a dentist who limits practice to a specialty recognized by the American dental association, who has graduated from a board-approved postgraduate program in the dentist's specialty and is a person both qualified and licensed by the laws of Idaho to practice a dental specialty.

(7) "Dentist" is a person both qualified and licensed by the laws of Idaho to practice dentistry.

(8) "Direct supervision" is supervision of a dental assistant or dental hygienist requiring that a dentist diagnose the condition to be treated, that a dentist authorize the procedure to be performed, that a dentist remain in the dental office while the procedure is performed, and that before dismissal of the patient a dentist approves the work performed by the dental assistant or dental hygienist.

(9) "Extended access oral health care program" means and includes:

(a) Dental and dental hygiene treatment and services provided as part of a program conducted by or through a school district, county, state or

federal agency, hospital, long-term care facility, public health district, dental or dental hygiene school, tribal clinic, or federally qualified health center; or

(b) Oral health care programs approved by the board and conducted by or through a nonprofit public or private entity, organized in accordance with section 501(c)(3) or 501(c)(4) of the federal Internal Revenue Code, that provide free dental or dental hygiene services to persons who, due to age, infirmity, indigence, disability or other similar reason, may be unable to receive regular dental and dental hygiene treatment. The board may require reapproval of the oral health care programs on an annual basis or at such other times as may be deemed by the board to be necessary or appropriate.

(10) "General supervision" is supervision of a dental assistant or dental hygienist requiring that a dentist authorize the procedure which is carried out, but not requiring that a dentist be in the office when the authorized procedure is performed.

(11) "Indirect supervision" is supervision of a dental assistant or dental hygienist requiring that a dentist authorize a procedure and that a dentist be in the dental office while the procedure is performed by the assistant or hygienist.

History.

I.C., § 54-903, as added by 1987, ch. 30, § 3, p. 39; am. 1994, ch. 58, § 3, p. 98; am. 1997, ch. 78, § 1, p. 162; am. 2004, ch. 214, § 1, p. 647; am. 2004, ch. 217, § 1, p. 652; am. 2006, ch. 285, § 1, p. 874; am. 2007, ch. 93, § 1, p. 274; am. 2010, ch. 235, § 37, p. 542; am. 2014, ch. 49, § 1, p. 125.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 49, substituted "at a dental office" for "by a dentist at his office" in subsection (4) and rewrote subsection (9), which formerly read: "'Extended access oral health care program" means and includes dental and dental hygiene treatment and services provided as part of a program conducted by or through a local, county, state or federal agency, hospital, long-term care facility, public health district, dental or dental hygiene school, tribal clinic, or migrant health center; or such other oral health care program approved on an annual basis by the board and conducted by or through a public or private entity, recognized under section 501(c)(3) of the federal Internal Revenue Code, to provide free or reduced fee dental and dental hygiene

services to persons who, due to age, infirmity, indigence or disability, are unable to receive regular dental and dental hygiene treatment in a private office".

Federal References.

Sections 501(c)(3) and 501(c)(4) of the federal Internal Revenue Code, referred to in subsection (9), are codified as 26 U.S.C.S. §§ 501(c)(3) and 501(c)(4).

Compiler's Notes.

For more on the Idaho state dental association, see <http://www.theisda.org>.

For more on the Idaho dental hygienists' association, see <http://idha.org>.

For more on the American dental association, see <http://www.ada.org>.

54-911. Board of dentistry — Organization — Meetings — Expenses — Per diem. — The board of dentistry shall select from its dentist members a chairman who shall serve at the pleasure of the board. The board may meet at stated times, and shall meet upon the call of its chairman or a majority of the members. It shall keep minutes of its meetings and actions thereat. Five (5) members, three (3) of whom must be dentists and two (2) of whom must be nondentists, shall constitute a quorum, and the vote of the

majority of the members present at a meeting at which a quorum is present shall determine the action of the board.

Out of any appropriation applicable to the administration of this chapter, each member of the board shall be compensated as provided by section 59-509(n), Idaho Code.

History.

1949, ch. 102, § 11, p. 177; am. 1963, ch. 55, § 1, p. 219; am. 1967, ch. 312, § 8, p. 886; am. 1976, ch. 177, § 1, p. 641; am. 1980, ch. 247,

§ 56, p. 582; am. 1981, ch. 215, § 7, p. 389; am. 1991, ch. 147, § 5, p. 347; am. 1994, ch. 58, § 11, p. 98; am. 1996, ch. 237, § 1, p. 766; am. 2014, ch. 121, § 1, p. 344.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 121, substituted “two (2) of whom must be nondentists” for “one (1) of whom must be a nondentist” in

the last sentence of the first paragraph and substituted “this chapter” for “this act” in the second paragraph.

54-912. Board of dentistry — Powers and duties. — The board shall have the following powers and duties:

(1) To ascertain the qualifications and fitness of applicants to practice dentistry, a dental specialty or dental hygiene; to prepare, conduct and grade qualifying examinations; to require and accept passing results of written and clinical examinations from approved dental and dental hygiene testing organizations; to issue in the name of the board a certificate of qualification to applicants found to be fit and qualified to practice dentistry or dental hygiene.

(2) To prescribe rules for a fair and wholly impartial method of licensure and examination of applicants to practice dentistry, a dental specialty or dental hygiene.

(3) To define by rule what shall constitute accepted and approved schools, colleges, institutions, universities or departments thereof for the teaching of dentistry or dental hygiene and to determine, accept and approve those that comply therewith.

(4) To promulgate other rules required by law or necessary or desirable for its enforcement and administration; to define by rule the terms unprofessional conduct or practices injurious to the public as the terms are used in section 54-924, Idaho Code, to furnish applications, certificates, licenses and other necessary forms.

(5) To inspect or cause to be inspected the offices or operating rooms of all persons licensed under this chapter.

(6) Upon its own motion or upon any complaint, to initiate and conduct investigations on all matters relating to the practice of dentistry or dental hygiene and to conduct hearings or proceedings on its own or through its designated hearing officer, to revoke, suspend or otherwise condition certificates of qualification or licenses of persons practicing dentistry or dental hygiene and, on such terms as the board shall deem appropriate, to revoke, suspend, or otherwise condition such licenses, provided such hearings and proceedings shall be had in conformance with the provisions of chapter 52, title 67, Idaho Code. Final decisions of the board shall be subject to judicial review as provided in chapter 52, title 67, Idaho Code.

(7) The board, its designated hearing officer, or representative shall have power to administer oaths, the power to engage in discovery as provided in the Idaho rules of civil procedure and chapter 52, title 67, Idaho Code, including, but not limited to, the power to take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of witnesses and the production of books, records and papers as it may desire at any hearing before it of any matter which it has authority to investigate, and for that purpose the board or its designated hearing officer may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where the witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases and shall be paid from the state board of dentistry fund in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court, or any judge thereof, of any county in this state in which the disobedience, neglect or refusal occurs, upon application by the board to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or for refusal to testify. The licensed person accused in the proceedings shall have the same right of subpoena upon making application to the board.

(8) The board shall establish an office and may appoint an executive director and may employ other personnel, including attorneys and hearing officers, as may be necessary to assist the board. The board shall prescribe the duties of the executive director and these duties shall include the preparation of all papers and records under law for the board, and shall include enforcement activities as to the board may from time to time appear advisable, and the executive director shall act for and on behalf of the board in such manner as the board may authorize, keep records, property and equipment of the board and discharge other duties as the board may from time to time prescribe. The compensation of the executive director or other personnel shall be determined by the board and the executive director shall be bonded to the state in the time, form and manner prescribed in chapter 8, title 59, Idaho Code.

(9) To report annually to the associations on the status of the state board of dentistry fund and furnish the associations a written report on all receipts and expenditures during the preceding year.

(10) Provide, by rule, for reasonable fees for administrative costs and assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee has been found to be in violation of this chapter.

History.

1949, ch. 102, § 12, p. 177; am. 1967, ch. 312, § 9, p. 886; am. 1971, ch. 136, § 34, p. 522; am. 1974, ch. 13, § 89, p. 138; am. 1986, ch. 35, § 3, p. 108; am. 1991, ch. 147, § 6, p. 347; am. 1993, ch. 216, § 59, p. 587; am. 1994,

ch. 58, § 12, p. 98; am. 2000, ch. 40, § 1, p. 79;
 am. 2003, ch. 160, § 1, p. 451; am. 2014, ch.
 121, § 2, p. 344.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 121, deleted “who need not be a member of the board or a person licensed to practice dentistry or dental hygiene” after “executive director” in the first sentence of subsection (8) and substituted “state board of dentistry fund” for “state board of dentistry account” in subsection (9).

Compiler's Notes.

Although subsection (4) reads, “to define by rule the terms unprofessional conduct or practices injurious to the public as the terms are used in section 54-924” neither of those terms appear in § 54-924. See § 54-924(8) which reads, “Engage in unprofessional conduct, as defined by board rules.”

54-915. Qualifications required for dentist or dental hygienist licensure. — No person hereafter shall be eligible for licensure to practice dentistry or dental hygiene in this state unless the applicant:

(1) Is of good moral character and has not pled guilty to or been convicted of any felony, or of any misdemeanor involving moral turpitude, unless the person demonstrates that he has been sufficiently rehabilitated to warrant the public trust;

(2) Shall, for dentistry, have successfully completed the course of study in dentistry, and graduated and received a degree of doctor of dental surgery or doctor of dental medicine from a dental school accepted and approved by the board;

(3) Shall, for dental hygiene, have successfully completed the course of study in dental hygiene, and received a degree from a dental hygiene school accepted and approved by the board;

(4) Shall, for dentistry and dental hygiene, pass the examinations provided for in section 54-918, Idaho Code.

History.

1949, ch. 102, § 15, p. 177; am. 1963, ch. 56, § 1, p. 220; am. 1967, ch. 312, § 12, p. 886; am. 1991, ch. 15, § 1, p. 32; am. 1991, ch. 147, § 7, p. 347; am. 1994, ch. 58, § 15, p. 98; am. 2003, ch. 160, § 2, p. 451; am. 2014, ch. 121, § 3, p. 344.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 121, deleted

“or equivalent degree” preceding “from a dental school” in subsection (2).

54-916A. Dental hygiene licensure by credentials. — The board may issue a license to practice dental hygiene without further examination to an applicant upon evidence that:

(1) The applicant currently holds an active license in good standing to practice dental hygiene in another state with no disciplinary proceedings or unresolved complaints pending before the state’s licensing board;

(2) The applicant has been licensed for at least one (1) year and the applicant has practiced a minimum of one thousand (1,000) hours in the two (2) years immediately preceding the date of application;

(3) The applicant has graduated from a dental hygiene school accredited

by the commission on dental accreditation of the American dental association as of the date of the applicant's graduation;

(4) The applicant has successfully completed a board approved clinical examination;

(5) The applicant has successfully completed the national board dental hygiene examination; and

(6) The applicant has paid the application fee as set by board rule.

History.

I.C., § 54-916A, as added by 1992, ch. 3, § 1, p. 8; am. 1997, ch. 81, § 1, p. 191; am.

2014, ch. 121, § 4, p. 344.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 121, rewrote the section heading, which read: "Dental hy-

giene applicants licensed in other states," and rewrote the section to the extent that a detailed comparison is impracticable.

54-916B. Dental licensure by credentials. — The board may issue a license to practice dentistry without further examination upon evidence that:

(1) The applicant currently holds an active license in good standing to practice dentistry in another state with no disciplinary proceedings or unresolved complaints pending before the state's licensing board;

(2) The applicant has been in clinical practice at least five (5) years immediately preceding the date of application for a minimum of one thousand (1,000) hours in each year;

(3) The applicant has graduated from a dental school accredited by the commission on dental accreditation of the American dental association as of the date of the applicant's graduation;

(4) The applicant has successfully completed the national board dental examinations;

(5) The applicant has successfully completed a board approved clinical examination; and

(6) The applicant has paid the application fee as set by board rule.

History.

I.C., § 54-916B, as added by 1997, ch. 95, § 1, p. 224; am. 2014, ch. 121, § 5, p. 344.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 121, rewrote the section heading, which read: "Dental ap-

plicants licensed in other states," and rewrote the section to the extent that a detailed comparison is impracticable.

54-918. Examinations — Certificate of qualification. — (1) An applicant for licensure shall pass such examinations in dentistry and in dental hygiene as are conducted by the board or its agent. Examinations shall be written or clinical, or both, and upon such subjects in dentistry and dental hygiene as the board shall determine will thoroughly test the fitness and ability of the applicant to practice dentistry or dental hygiene. An

applicant for licensure shall pass the written jurisprudence examination conducted by the board. A passing score of seventy-five percent (75%) correct shall be required on the written jurisprudence examination. A passing score of at least seventy-five percent (75%) correct shall be required on any additional written or clinical examinations conducted by the board. It shall report and record the names of applicants who pass and of those who fail the examinations. Upon the candidate's request, the board will issue to each passing applicant in dentistry, who is qualified for Idaho licensure, a certificate of qualification to practice dentistry, and to each passing applicant in dental hygiene, who is qualified for Idaho licensure, a certificate of qualification to practice dental hygiene within the state of Idaho.

(2) In lieu of conducting written examinations other than the jurisprudence examination, the board may require and accept the results of the national board dental and dental hygiene examinations administered by the American dental association. The American dental association shall set the standards for passing the national board dental and dental hygiene examinations. In lieu of conducting clinical examinations, the board may require and accept the results of clinical examinations administered by national or regional testing organizations approved by the board. The national or regional testing organizations shall set the standards for passing or acceptable level of competency on the clinical examinations administered.

(3) Applicants who fail any examination conducted by the board or its agent shall be notified thereof in writing by the board, which shall also record the fact of failure and the date and means of notification.

(4) Written questions and answers of applicants shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless exempt from disclosure in that chapter and title, and shall be destroyed by the board after the period of one (1) year following the examination.

History.

1949, ch. 102, § 18, p. 177; am. 1967, ch. 312, § 15, p. 886; am. 1986, ch. 35, § 5, p. 108; am. 1990, ch. 213, § 74, p. 157; am. 1994,

ch. 58, § 18, p. 98; am. 1999, ch. 30, § 14, p. 41; am. 2003, ch. 160, § 3, p. 451; am. 2014, ch. 121, § 6, p. 344.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 121, inserted "or its agent" at the end of the first sentence in subsection (1) and near the middle of subsection (3).

Compiler's Notes.

For more on the American dental association, see <http://www.ada.org>.

54-920. Licensing — License fees — Biennial renewal of licenses — Late fees and returned checks — Classifications of licenses — Rights of licensees — Notification of change of address. — (1) Each person determined by the board as qualified for licensure under this chapter shall pay the prescribed biennial license fee to the board prior to issuance of a license. Unless otherwise specified on a license, licenses issued by the board shall be effective for the biennial licensing period specified in this section. The biennial licensing period for dental licenses shall be a two (2) year period from October 1 of each even-numbered calendar year to

September 30 of the next successive even-numbered calendar year. The biennial licensing period for dental hygiene licenses shall be a two (2) year period from April 1 of each odd-numbered calendar year to March 31 of the next successive odd-numbered calendar year. Unless otherwise specified on a license, any license issued during a biennial licensing period shall be effective until the beginning date of the next successive biennial licensing period and the board may prorate the amount of the license fee from the date of issuance of the license until the beginning date of the next applicable biennial licensing period at the discretion of the board. A license issued by the board shall expire unless renewed in the manner specified in this section.

(2) The nonrefundable biennial license fees shall be fixed by the board, but shall not exceed the following amounts:

- (a) Four hundred dollars (\$400) for a dentist with an active status;
- (b) Two hundred dollars (\$200) for a dentist with an inactive status;
- (c) Two hundred twenty dollars (\$220) for a dental hygienist with an active status;
- (d) One hundred twelve dollars (\$112) for a dental hygienist with an inactive status;
- (e) Four hundred dollars (\$400) for a dentist with a specialist status; or
- (f) Twenty dollars (\$20.00) for a dentist or dental hygienist with a retirement status.

(3) A license issued by the board shall be renewed as prescribed in this section. Prior to the expiration of the effective period of a license, the board shall provide notice of renewal to the licensee's address of record on file with the board. To renew a dental license, each licensee shall submit a properly completed renewal application and the appropriate biennial license fee to the board prior to September 30 of every even-numbered calendar year. To renew a dental hygiene license, each licensee shall submit a properly completed renewal application and the appropriate biennial license fee to the board prior to March 31 of each odd-numbered calendar year. Each licensee determined by the board as qualified for renewal of a license shall be issued a license for the applicable biennial licensing period.

(4) The following procedure shall be followed by the board for all licensees who fail to submit a properly completed renewal application and appropriate biennial license fee on or before the expiration of the effective period of a license. A license that expires by reason of a licensee's failure to satisfy the renewal requirements shall not be considered to be a disciplinary action by the board and shall result in the termination of the licensee's right to practice dentistry or dental hygiene in the state.

- (a) The board shall mail a notice of failure to renew a license to the licensee's address; and
- (b) The notice of failure to renew a license shall advise the licensee that he has failed to comply with the board's license renewal requirements and that a failure to submit a properly completed renewal application, the appropriate biennial license fee and a fifty dollar (\$50.00) late fee within thirty (30) days of the date upon which the board's notice was mailed shall result in the expiration of his license.

(5) Any person who delivers a check or other payment to the board that is returned to the board unpaid by the financial institution upon which it was drawn shall pay to the board as an administrative cost, in addition to any other amount owing, the amount of fifty dollars (\$50.00). Following notification by the board of the returned check or other payment, the person shall make payment of all moneys owing to the board by certified check or money order within thirty (30) days of the date of notification. A failure to submit the necessary remittance within the thirty (30) day period may result in the expiration of a license or constitute grounds for the board to deny, cancel, suspend or revoke a license.

(6) The board of dentistry may issue different classes of licenses as defined in this subsection.

(a) The term "license with active status" means a license issued by the board to a qualified person who is authorized to be an active practitioner of dentistry or dental hygiene in the state of Idaho. A person's right to be issued and maintain a license with active status shall not be affected by any absence, not exceeding two (2) years, from active practice in Idaho by reason of illness or vacation. A person's right to be issued and maintain a license with active status shall not be affected by any absence from active practice in Idaho for any period while serving on active duty in the armed forces of the United States, while employed in the United States public health service or United States veterans administration, or while enrolled in board-approved postgraduate educational courses, either within or without the state of Idaho. Each applicant or licensee requesting an active status license must state that he intends to fulfill the requirements for that status.

(b) The term "license with an inactive status" means a license issued by the board to a qualified person who is not authorized to be an active practitioner of dentistry or dental hygiene in the state of Idaho. A person issued a license with an inactive status is not entitled to practice dentistry or dental hygiene in the state of Idaho.

(c) The terms "license with special status" and "license with provisional status" mean licenses issued by the board to a qualified person on a provisional, conditional, restricted or limited basis under the terms of which the licensee is authorized to practice dentistry or dental hygiene in the state of Idaho subject to conditions, limitations and requirements imposed by the board. The conditions, limitations and requirements imposed by the board may include, but are not limited to, a limitation on the effective period of the license, a requirement that specific conditions must be fulfilled in order for the license to remain effective, a requirement that specified education, examinations and skills testing be successfully completed during the effective period of the license, a restriction on the scope of permissible services that the licensee is authorized to perform, a restriction on the type of patients for whom treatment may be rendered and a restriction on the locations at which the licensee can perform authorized services.

(d) The term "license with retirement status" means a license issued to a person who was previously licensed as a dentist or dental hygienist in

Idaho who no longer intends to practice dentistry or dental hygiene. A license with retirement status does not permit the holder to practice dentistry or dental hygiene in the state of Idaho. A license with retirement status cannot be converted to a license with active or inactive status other than by filing an application for licensure and qualifying as required of a first time applicant.

(7)(a) The board may issue a license with active status to any qualified applicant or qualified licensee who is an active practitioner of dentistry or dental hygiene in the state of Idaho or who signifies to the board in writing that, upon issuance of an initial license or renewal of a biennial license, he intends to be an active practitioner in this state within two (2) years. Renewal of a license with active status requires compliance with requirements as determined by the board.

(b) The board may issue a license with inactive status to any qualified person who fulfilled the licensure requirements but, for any reason, is not eligible for a license with active status. Renewal of a license with inactive status requires compliance with requirements as determined by the board.

(c) The board may issue a license with provisional status or special status to any person who fulfills, or substantially fulfills, the applicable licensure requirements when the board, acting in its discretion, determined that special circumstances existed which, for the protection of the public health, safety and welfare, required that specific conditions, restrictions or limitations be imposed on the license. A license with special status or provisional status entitles the holder thereof to practice dentistry or dental hygiene in the state of Idaho subject to the conditions, restrictions and limitations specifically determined by the board and for the period of time prescribed. A provisional license is effective for the period specified by the board and may not be renewed. The board shall develop rules to include definitions, application and renewal requirements, limitations of practice and other conditions regarding provisional and special status licenses.

(d) The board may convert a license with inactive status to a license with active status in the event the holder pays the license fee prescribed for licenses with active status and submits to the board satisfactory evidence of:

- (i) Compliance with the requirements of this chapter and all rules promulgated under the provisions of this chapter;
- (ii) Good moral character and good professional conduct; and
- (iii) A minimum of one thousand (1,000) hours of clinical dentistry or dental hygiene practiced within the previous two (2) years or has been employed full time as a dental or dental hygiene instructor at an American dental association accredited dental or dental hygiene school or has been enrolled in a board approved postgraduate educational program.

(e) Persons unable to otherwise fully meet the requirements for conversion of an inactive status license to an active status license may convert their license upon board approval.

(8) Each person licensed under this chapter shall notify the board in writing of any change in the person's name or address of record within thirty (30) days after the change has taken place.

History.

I.C., § 54-920, as added by 2006, ch. 285, § 5, p. 874; am. 2014, ch. 121, § 7, p. 344.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 121, substituted "shall provide notice of renewal" for "shall mail a renewal application" in the first sentence in subsection (3), deleted "evidence of" from the beginning of paragraph (7)(d)(ii); and rewrote paragraph (7)(d)(iii).

Compiler's Notes.

For more on the American dental association, see <http://www.ada.org>.

54-924. Other grounds of refusal, revocation or suspension of dentists — Probation agreements. — The board may refuse to issue or renew a dental license, or may revoke, suspend, place on probation, reprimand or take other disciplinary action with respect to a dental license as the board may deem proper, including administrative penalties not to exceed ten thousand dollars (\$10,000) per violation and assessment of the costs of disciplinary proceedings in the event a dentist shall:

(1) Intentionally misstate, or fail fully to disclose, a fact material to determination of fitness and qualification in an application for licensure to practice dentistry, or cheat in an examination to practice dentistry; or procure a certificate or finding of qualification to practice dentistry or subsequently a license by false, fraudulent or deceitful means or in any other name than his own true name; or

(2) Practice dentistry under any name other than his own true name except as a professional service corporation or professional limited liability company or as a limited managed care plan pursuant to chapter 39, title 41, Idaho Code; or

(3) Practice or in any manner or by any means or at any place hold out or represent himself as practicing dentistry in or under the name of, or as a member, representative, agent or employee of, or in connection with, any company, association, or corporation, or under any trade, fictitious or business name except as a professional service corporation or professional limited liability company or as a limited managed care plan pursuant to chapter 39, title 41, Idaho Code, except for a dentist practicing dentistry as an employee or contracting dentist providing dentistry services to any health center as defined and authorized in section 330 of the public health service act, codified as amended at 42 U.S.C. 254b; or

(4)(a) Make, or cause to be made, or assist in making, any fraudulent, false, or misleading statement as to his own, or an employee's, associate's, or other dentist's or dental hygienist's skill or lack of skill, or method of practice; or

(b) Claim to practice dentistry without causing pain; or

(c) Claim superiority over other dentists; or

- (d) Publish, advertise, or circulate reports, letters, certificates, endorsements, or evidence of cures or corrections of dental conditions by such dentist, his employee or associate by reason of his or their skill, experience, or ability or of his or their use of any system, method, technique, device, drug, medicine, material, manipulation or machine; or
- (e) Advertise the use of, or use, any system, method, technique, device, drug, medicine, material or machine, which is either falsely advertised or misnamed; or

(5) Use intoxicants or drugs to such a degree as to render him unfit to practice; or

- (6) Commit malpractice, that is, to provide dental care which fails to meet the standard of dental care provided by other qualified dentists in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public; or
- (7) Engage in unprofessional conduct, as defined by board rules; or
- (8) Advertise in such way as to deceive or defraud, or probably deceive or defraud, the public or patrons; or
- (9) Employ or permit any person not a dentist to practice dentistry, or any person not a dentist or dental hygienist to practice dental hygiene, in his office or under his control or direction; or
- (10) Fail, neglect or refuse to keep his office or equipment, or otherwise conduct his work in accordance with current state and federal laws, rules and regulations; or
- (11) Violate any other provisions of law or rules adopted by the board; or
- (12) Falsely identify himself to the public as a specialist in a specialty area of dentistry as defined by rule; or
- (13) Engage in the practice of dentistry as a member, stockholder, employee, director, partner or proprietor in any business entity in which a person, not duly licensed to practice dentistry in this state, holds an ownership interest. The provisions of this subsection shall not apply to such engagement in a limited managed care plan pursuant to chapter 39, title 41, Idaho Code, or to a dentist practicing dentistry for any health care center as defined and authorized in section 330 of the public health service act, codified as amended at 42 U.S.C. 254b.

History.

1949, ch. 102, § 24, p. 177; am. 1963, ch. 336, § 1, p. 963; am. 1967, ch. 312, § 21, p. 886; am. 1971, ch. 83, § 4, p. 181; am. 1981, ch. 215, § 12, p. 389; am. 1986, ch. 35, § 8, p.

108; am. 1987, ch. 30, § 9, p. 39; am. 1994, ch. 58, § 24, p. 98; am. 2006, ch. 285, § 9, p. 874; am. 2013, ch. 281, § 1, p. 730; am. 2014, ch. 121, § 8, p. 344.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 281, deleted "authorized by the provisions of the" preceding "professional service corporation" in subsections (2) and (3); added "or professional limited liability company or as a limited managed care plan pursuant to chapter 39, title 41, Idaho Code, except for a dentist practicing dentistry as an employee or contracting dentist providing dentistry services to any health center as defined and authorized in section 330 of the public health service act as amended codified

added "or professional limited liability company or as a limited managed care plan pursuant to chapter 39, title 41, Idaho Code, except for a dentist practicing dentistry as an employee or contracting dentist providing dentistry services to any health center as defined and authorized in section 330 of the public health service act as amended codified

at 42 U.S.C. 254b" to the end of subsection (3); and added subsection (14).

The 2014 amendment, by ch. 121, deleted subsection (5) which read: "Employ any person to obtain patronage, or call or seek to call, the attention of the public to him, his office, his skill, or his practice, by public exhibition, use, reproduction, or representation of specimens or samples, of dental work, or by dem-

onstrations in public. This shall not apply to teaching in dental or dental hygiene schools, or demonstrations or exhibitions before meetings of other dentists or dental hygienists; or" and redesignated the subsequent subsections accordingly; and in present subsection (7), deleted "unethical or immoral" preceding "conduct" following "unprofessional".

CHAPTER 12

ENGINEERS AND SURVEYORS

SECTION.

54-1202. Definitions.

54-1218. Public works.

54-1220. Disciplinary action — Procedures.

54-1221. Reissuance of licenses and wall certificates.

SECTION.

54-1228. Administering and certification of oaths — Authority of professional land surveyors.

54-1202. Definitions. — As used in this chapter, unless the context or subject matter requires otherwise:

(1) "Benchmark" means a material object, natural or artificial, whose elevation is referenced to an adopted datum.

(2) "Board" means the Idaho board of licensure of professional engineers and professional land surveyors, hereinafter provided by this chapter.

(3) "Business entity" means a corporation, professional corporation, limited liability company, professional limited liability company, general partnership, limited partnership, limited liability partnership, professional limited liability partnership or any other form of business except a sole proprietorship.

(4) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of professional engineering; whose livelihood is obtained by offering engineering services to the public; who is devoid of public, commercial and product affiliation that might tend to infer a conflict of interest; and who is cognizant of his public and legal responsibilities, and is capable of discharging them.

(5) "Engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences, and the principles and methods of engineering analysis and design, acquired by professional education and engineering experience.

(6) "Engineer intern" means a person who has qualified for, taken and passed an examination in the fundamentals of engineering subjects as provided in this chapter.

(7) "Land survey" means measuring the field location of corners that:

- (a) Determine the boundary or boundaries common to two (2) or more ownerships;
- (b) Retrace or establish land boundaries;
- (c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or

(d) Plat lands and subdivisions thereof.

(8) "Land surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in this chapter.

(9) "Professional engineer" means a person who has been duly licensed as a professional engineer by the board under this chapter.

(10) "Professional engineering" and "practice of professional engineering" mean any service or creative work offered to or performed for the public for any project physically located in this state, such as consultation, investigation, evaluation, planning, designing, design coordination, teaching upper division engineering design subjects, and responsible charge of observation of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects or to certify elevation information, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data. A person shall be construed to practice or offer to practice professional engineering within the meaning and intent of this chapter who practices or offers to practice any of the branches of the profession of engineering for the public for any project physically located in this state or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter, or holds himself out as able to perform or who does perform for the public for any project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering.

(11) "Professional land surveying" and "practice of professional land surveying" mean responsible charge of land surveying to determine the correct boundary description, to establish or reestablish land boundaries, to plat lands and subdivisions thereof or to certify elevation information. Any person shall be construed to practice or offer to practice professional land surveying who engages in professional land surveying, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional land surveyor, or who represents himself as able to perform or who does perform any professional land surveying service or work or any other service designated by the practitioner which is professional land surveying.

(12) "Professional land surveyor" means a person who is qualified by reason of his knowledge of the principles of land surveying acquired by education and practical experience to engage in the practice of professional land surveying and who has been duly licensed as a professional land surveyor by the board under this chapter.

(13) "Public" means any person, firm, corporation, partnership, company, government agency, institution or any other entity recognized by law.

(14) "Responsible charge" means the control and direction of engineering work, or the control and direction of land surveying work, requiring initiative, professional skill, independent judgment and professional knowl-

edge of the content of relevant documents during their preparation. Except as allowed under section 54-1223, Idaho Code, reviewing, or reviewing and correcting, documents after they have been prepared by others does not constitute the exercise of responsible charge.

(15) "Rules of professional responsibility" means those rules, if any, promulgated by the board, as authorized by the Idaho Code.

(16) "Signature" means either: an original handwritten message identification containing the name of the person who applied it; or a digital signature which is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; and must be linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(17) "Standard design plan" means a building, structure, equipment or facility which is intended to be constructed or sited at multiple locations and for which some or all of the plans must be prepared by a professional engineer.

History.

1939, ch. 231, § 2, p. 516; am. 1957, ch. 234, § 2, p. 547; am. 1961, ch. 258, § 1, p. 422; am. 1978, ch. 170, § 1, p. 371; am. 1986, ch. 140, § 2, p. 375; am. 1996, ch. 357, § 2, p. 1185; am. 2000, ch. 289, § 1, p. 991; am. 2001, ch.

247, § 2, p. 889; am. 2002, ch. 6, § 1, p. 6; am. 2007, ch. 219, § 1, p. 655; am. 2008, ch. 378, § 3, p. 1024; am. 2011, ch. 136, § 10, p. 383; am. 2013, ch. 339, § 1, p. 886; am. 2014, ch. 235, § 1, p. 594.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 339, in the first sentences in subsections (10) and (11), inserted "or to certify elevation information."

The 2014 amendment, by ch. 235, inserted "design coordination" following "planning, designing" in the first sentence in subsection (10).

54-1218. Public works. — (1) It shall be unlawful for this state, or for any county, city, school district, irrigation district, drainage district, highway district, or other subdivision of the state having power to levy taxes or assessments against property situated therein, to engage in the construction of any public works when the public health or safety is involved unless the plans and specifications and estimates have been prepared by, and the construction reviewed by, a professional engineer.

(2) The provisions of this section shall not apply to public construction, reconstruction, maintenance and repair work that is insignificant, that is projects of less than ten thousand dollars (\$10,000) in total cost, performed by employees of the public agency and performed in accordance with standards for such work that have been certified by a professional engineer and duly adopted by the public agency's governing body including, but not limited to, the Idaho standards for public works construction and any supplements thereto, and only if a professional engineer determines that such public construction, reconstruction, maintenance and repair work does not represent a material risk to public health or safety.

History.

1939, ch. 231, § 18, p. 516; am. 1978, ch. 170, § 14, p. 371; am. 2008, ch. 378, § 15, p.

1039; am. 2013, ch. 289, § 1, p. 762; am. 2014, ch. 97, § 32, p. 265.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 289, added subsection (2) and the subsection (1) designation.

The 2014 amendment, by ch. 97, substituted "public works" for "public work" in the section heading and in subsection (1).

Compiler's Notes.

As to the Idaho standards for public works construction, see <http://lhtac.org/publications/ispwcl>.

54-1220. Disciplinary action — Procedures. — (1) Any affected party may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct or violation of any provision of this chapter, or violation of any of the rules promulgated by the board against any individual licensee or certificate holder or against any business entity holding a certificate of authorization or against a person applying for a license or against a business entity applying for a certificate of authorization. Repeated acts of negligence may be considered as a gross act for disciplinary action. Such charges shall be in writing, and shall be sworn to by the person or persons making them and shall be filed with the executive director of the board. The executive director of the board shall be considered an affected party and may be the person making and filing the charges.

(2) All charges, unless dismissed by the board as unfounded or de minimis, or unless settled informally, shall be heard by the board within six (6) months after the date they were received at the board office unless such time is extended by the board for justifiable cause.

(3) Administrative proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(4) If, after an administrative hearing, the board votes in favor of sustaining the charges, the board may, in its discretion, impose an administrative penalty, not to exceed five thousand dollars (\$5,000) for deposit in the general fund of the state of Idaho. In addition, the board, in its discretion, may admonish, reprimand, suspend, revoke, refuse to renew, refuse to grant, or any combination thereof, the individual's license or certificate or a business entity's certificate of authorization. The board may also, in its discretion, require the individual to practice under the supervision of another licensee, or require the individual to successfully complete continuing education courses as may be prescribed by the board.

(5) The board shall have jurisdiction over licensees whose licenses are not current provided the action relates to services performed when the license was current and valid.

History.

1939, ch. 231, § 20, p. 516; am. 1957, ch. 234, § 12, p. 547; am. 1963, ch. 25, § 1, p. 167; am. 1978, ch. 170, § 16, p. 371; am. 1986, ch. 140, § 18, p. 375; am. 1991, ch. 21, § 1, p. 43; am. 1993, ch. 216, § 63, p. 587; am. 1996,

ch. 357, § 16, p. 1185; am. 2000, ch. 289, § 12, p. 991; am. 2001, ch. 247, § 7, p. 889; am. 2004, ch. 84, § 4, p. 312; am. 2007, ch. 219, § 4, p. 655; am. 2008, ch. 378, § 17, p. 1040; am. 2010, ch. 111, § 5, p. 223; am. 2013, ch. 339, § 2, p. 886.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 339, substi-

tuted “de minimis” for “trivial” in subsection (2).

54-1221. Reissuance of licenses and wall certificates. — The board may, upon petition of an individual or a business entity and following a hearing, reissue or reinstate a license or certificate or certificate of authorization, provided three (3) or more members of the board vote in favor of such reissuance or reinstatement. A new wall certificate to replace any wall certificate revoked, lost, destroyed or mutilated may be issued upon payment of such reasonable charge therefor as shall be fixed by the board to cover the estimated cost of such reissuance, but not exceeding ten dollars (\$10.00) in any case.

History.

1939, ch. 231, § 21, p. 516; am. 1957, ch. 234, § 13, p. 547; am. 1963, ch. 26, § 1, p.

168; am. 1986, ch. 140, § 19, p. 375; am. 2001, ch. 247, § 8, p. 889; am. 2008, ch. 378, § 18, p. 1041; am. 2013, ch. 339, § 3, p. 886.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 339, inserted “wall” in the section heading; in the first sentence, inserted “and following a hearing”,

and, in the second sentence, substituted “wall” for “license or” two times and deleted “or certificate of authorization” following “A new wall certificate” near the beginning.

54-1228. Administering and certification of oaths — Authority of professional land surveyors. — Every professional land surveyor is authorized to administer and certify oaths, when it becomes necessary to take testimony to identify or establish old or obliterated corners, or to perpetuate a corner that is in a perishable condition, or whenever the importance of the land survey makes it desirable. A record of such oaths shall be kept as part of the field notes of the land survey.

History.

1903, p. 81, § 6; am. R.C., § 1409; reen. C.L., § 1409; C.S., § 2241; am. 1921, ch. 158, § 2, p. 351; I.C.A., § 53-2307; am. 1957, ch.

234, § 18, p. 547; am. 1978, ch. 170, § 21, p. 371; am. 1986, ch. 140, § 23, p. 375; am. 2008, ch. 378, § 23, p. 1044; am. 2013, ch. 339, § 4, p. 886.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 339, substi-

tuted “obliterated corners” for “lost corners” in the first sentence.

CHAPTER 14

NURSES

SECTION.

54-1401. Purpose — License required — Representation to the public.

SECTION.

54-1413. Disciplinary action.

54-1401. Purpose — License required — Representation to the public. — In order to safeguard the public health, safety and welfare, it is in the public interest to regulate and control nursing in the state of Idaho, to promote quality health care services, to prohibit unqualified and dishonest persons from practicing nursing, and to protect against acts or conduct which may endanger the health and safety of the public.

(1) License required. It shall be unlawful for any person to practice nursing or offer to practice nursing unless that person is duly licensed pursuant to this chapter.

(2) Representation to the public. Only a person who holds a valid and current license to practice registered nursing in this state or a party state pursuant to sections 54-1408 and 54-1418, Idaho Code, may use the title "nurse," "registered nurse," "graduate nurse" or "professional nurse" or the abbreviation "R.N." or any other designations, titles or abbreviations to indicate that the person is practicing nursing in this state. Only a person who holds a valid and current license to practice practical nursing in this state or a party state pursuant to sections 54-1407 and 54-1418, Idaho Code, may use the title "nurse," "licensed practical nurse," or the abbreviation "L.P.N." or any other designations, titles or abbreviations to indicate that the person is practicing nursing in this state.

(3) All applicants for original licensure and for license reinstatement shall submit to a fingerprint-based criminal history check of both the Idaho central criminal database and the federal bureau of investigation criminal history database. All such applicants shall submit a full set of their fingerprints and any relevant fees directly to the Idaho board of nursing for forwarding to the appropriate law enforcement agency for processing. Criminal background reports received by the board from the Idaho state police and the federal bureau of investigation shall be used only for licensing decisions and handled and disposed of in a manner consistent with requirements imposed by the Idaho state police and the federal bureau of investigation.

History.

I.C., § 54-1401, as added by 1977, ch. 132, § 2, p. 279; am. 2003, ch. 188, § 1, p. 510; am.

2004, ch. 268, § 1, p. 751; am. 2008, ch. 67, § 1, p. 172; am. 2012, ch. 142, § 1, p. 371; am. 2014, ch. 44, § 1, p. 116.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 44, substituted "this chapter" for "this act" in subsection (1) and rewrote subsection (3), which formerly read: "On and after July 1, 2005, all applicants for original licensure and for license reinstatement will be required to submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant for original licensure and for license reinstatement must submit a full set of the applicant's fingerprints and any relevant fees directly to the Idaho state police and the federal bureau

of investigation identification division for this purpose".

Compiler's Notes.

The Idaho central criminal history database, referred to in the first sentence in subsection (3), is the state's central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.idaho.gov/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in the first sentence in subsection (3), is the integrated automated fingerprint identification system

(IAFIS), maintained by the criminal justice bureau of investigation. See <http://www.fbi.gov/hq/cjis/iafis.htm>.

54-1413. Disciplinary action. — (1) Grounds for discipline. The board shall have the power to refuse to issue, renew or reinstate a license issued pursuant to this chapter, and may revoke, suspend, place on probation, reprimand, limit, restrict, condition or take other disciplinary action against the licensee as it deems proper, including assessment of the costs of investigation and discipline against the licensee, upon a determination by the board that the licensee engaged in conduct constituting any one (1) of the following grounds:

- (a) Made, or caused to be made, a false, fraudulent or forged statement or representation in procuring or attempting to procure a license to practice nursing;
- (b) Practiced nursing under a false or assumed name;
- (c) Is convicted of a felony or of any offense involving moral turpitude;
- (d) Is or has been grossly negligent or reckless in performing nursing functions;
- (e) Habitually uses alcoholic beverages or drugs as defined by rule;
- (f) Is physically or mentally unfit to practice nursing;
- (g) Violates the provisions of this chapter or rules and standards of conduct and practice as may be adopted by the board;
- (h) Otherwise engages in conduct of a character likely to deceive, defraud or endanger patients or the public, which includes, but is not limited to, failing or refusing to report criminal conduct or other conduct by a licensee that endangers patients;
- (i) Has been disciplined by a nursing regulatory authority in any jurisdiction. A certified copy of the order entered by the jurisdiction shall be prima facie evidence of such discipline;
- (j) Failure to comply with the terms of any board order, negotiated settlement or probationary agreement of the board, or to pay fines or costs assessed in a prior disciplinary proceeding; or
- (k) Engaging in conduct with a patient that is sexual, sexually exploitative, sexually demeaning or may reasonably be interpreted as sexual, sexually exploitative or sexually demeaning; or engaging in conduct with a former patient that is sexually exploitative or may reasonably be interpreted as sexually exploitative. It would not be a violation under this subsection for a nurse to continue a sexual relationship with a spouse or individual of majority if a consensual sexual relationship existed prior to the establishment of the nurse-patient relationship.

(2) Separate offense. Each day an individual violates any of the provisions of this chapter or rules and standards of conduct and practice as may be adopted by the board shall constitute a separate offense.

(3) Proceedings.

(a) The executive director shall conduct such investigations and initiate such proceedings as necessary to ensure compliance with this section. The board may accept the voluntary surrender of a license from any nurse under investigation and accordingly enter an order revoking or suspend-

ing such license and/or imposing such conditions, limitations, or restrictions on the practice of any such nurse as may be appropriate in the discretion of the board. Otherwise, every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice. All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code.

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence. The board and any person duly appointed by the board to conduct hearings shall have all powers as are necessary and incident to orderly and effective receipt of evidence including, but not limited to, the power to administer oaths and to compel by subpoena attendance of witnesses and production of books, records and things at the hearing or at a deposition taken by a party in accordance with the Idaho rules of civil procedure. Any party shall be entitled to the use of subpoena upon application therefor.

(c) In the event any person fails to comply with a subpoena personally served upon him or refuses to testify to any matter regarding which he may be lawfully interrogated, the board shall petition the district court in the county where such failure or refusal occurred or where such person resides, to enforce such subpoena or compel such testimony. Proceedings before the district court shall be for contempt in the same nature as contempt of court for failure or refusal to comply with an order of the court and the court shall have the same powers to secure compliance with subpoena and testimony or to impose penalties as in contempt of court proceedings.

(4) Probation/Subsequent review. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor and/or supervise the practice of nursing by the licensee subject to such order for the prescribed probationary period. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice nursing and that he is not likely to violate this chapter or rules adopted hereunder in the future. The board may, as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs incurred by the board in proceedings upon which the order was entered.

(5) Reporting investigative information.

(a) Nothing in section 9-340C(8) and (9), Idaho Code, shall be construed as limiting the authority of the board to report current significant investigative information to the coordinated licensure information system for transmission to states that are parties to any multistate agreements or compacts regarding nurse licensure.

(b) The executive director of the board may, in the administration of this chapter, share information and otherwise cooperate with government regulatory and law enforcement agencies.

History.

I.C., § 54-1412, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 5, p. 101; am. and redesig. 1998, ch. 118, § 10, p. 435; am.

2001, ch. 76, § 2, p. 184; am. 2002, ch. 80, § 7, p. 178; am. 2008, ch. 67, § 2, p. 173; am. 2013, ch. 208, § 1, p. 496; am. 2014, ch. 139, § 1, p. 377.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 208, inserted the paragraph (a) designation in subsection (5) and added paragraph (5)(b).

The 2014 amendment, by ch. 139, in subsection (1), rewrote paragraph (i), which formerly read: "Has had a license to practice nursing suspended or revoked in any jurisdiction.

A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation; or" and added paragraph (k).

Effective Dates.

Section 2 of S.L. 2014, ch. 139 declared an emergency. Approved March 19, 2014.

CHAPTER 17**PHARMACISTS****SECTION.**

- 54-1701. Short title.
- 54-1702. Legislative declaration.
- 54-1704. Practice of pharmacy.
- 54-1705. Definitions.
- 54-1707. Membership.
- 54-1719. Medications — Drugs — Devices — Other materials.
- 54-1720. Other duties — Powers — Authority.
- 54-1721. Unlawful practice.
- 54-1723A. Registration to engage in the practice of pharmacy into Idaho.
- 54-1726. Grounds for discipline.
- 54-1728. Penalties and reinstatement.
- 54-1729. Registration and licensure of facilities.
- 54-1730. Drug outlet application procedures.
- 54-1732. Violations and penalties.

SECTION.

- 54-1733. Validity of prescription drug orders.
- 54-1734. Exceptions.
- 54-1740. Short title. [Repealed.]
- 54-1741. Legislative declaration. [Repealed.]
- 54-1742. Definition — Out-of-state mail service pharmacy. [Repealed.]
- 54-1743. License requirements. [Repealed.]
- 54-1744. Notifications. [Repealed.]
- 54-1745. Inspections. [Repealed.]
- 54-1746. Product selection of prescribed drugs. [Repealed.]
- 54-1747. Patient communication. [Repealed.]
- 54-1748. Violations and penalties. [Repealed.]
- 54-1752. Definitions.
- 54-1754. Restrictions on transactions.
- 54-1761. Definitions.

54-1701. Short title. — This chapter shall be known as the "Idaho Pharmacy Act."

History.

I.C., § 54-1701, as added by 1979, ch. 131, § 3, p. 402; am. 2013, ch. 28, § 2, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, substituted "This chapter" for "This act."

54-1702. Legislative declaration. — The practice of pharmacy in the state of Idaho is declared a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in this chapter, merits and

receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in or into the state of Idaho. This chapter shall be liberally construed to carry out these objects and purposes.

History.

I.C., § 54-1702, as added by 1979, ch. 131,
§ 3, p. 402; am. 2013, ch. 28, § 3, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, inserted
“or into” near the end of the second sentence

and substituted “This chapter” for “This act”
at the beginning of the last sentence.

54-1704. Practice of pharmacy. — “Practice of pharmacy” means:

- (1) The interpretation, evaluation and dispensing of prescription drug orders;
- (2) Participation in drug and device selection, drug administration, prospective and retrospective drug reviews and drug or drug-related research;
- (3) The provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care;
- (4) The responsibility for:
 - (a) Compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager or distributor of nonprescription drugs and commercially packaged legend drugs and devices;
 - (b) Proper and safe storage of drugs and devices, and maintenance of proper records for them; and
 - (c) The offering or performing of those acts, services, operations or transactions necessary to the conduct, operation, management and control of pharmacy;
- (5) The prescribing of:
 - (a) Dietary fluoride supplements when prescribed according to the American dental association’s recommendations for persons whose drinking water is proven to have a fluoride content below the United States department of health and human services’ recommended concentration; and
 - (b) Agents for active immunization when prescribed for susceptible persons twelve (12) years of age or older for the protection from communicable disease.

History.

I.C., § 54-1704, as added by 1979, ch. 131,
§ 3, p. 402; am. 1992, ch. 179, § 1, p. 564; am.

1993, ch. 49, § 1, p. 126; am. 2009, ch. 244,
§ 2, p. 748; am. 2011, ch. 264, § 1, p. 709; am.
2013, ch. 28, § 4, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, added the subsection designations; substituted “prospective and retrospective drug reviews and

drug or drug-related research” for “drug regimen reviews and drug or drug-related research; the practice of telepharmacy within and across state lines” in subsection (2).

Compiler's Notes.

For more on fluoride content of drinking water, see <http://www.cdc.gov/fluoridation>.

54-1705. Definitions. — In this chapter:

(1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Central drug outlet" means a resident or nonresident pharmacy, drug outlet, or business entity employing or contracting pharmacists to perform centralized pharmacy services.

(3) "Central pharmacist" means a pharmacist performing centralized pharmacy services.

(4) "Centralized pharmacy services" means the processing by a central drug outlet or central pharmacist of a request from another pharmacy to fill, refill, or dispense a prescription drug order, perform processing functions or provide cognitive or pharmaceutical care services. Each function may be performed by the same or different persons and at the same or different locations.

(5) "Compounding" means the act of incorporating two (2) or more substances to create a finished drug product.

(6) "Counseling" or "counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription drugs and devices. Specific areas of counseling shall include, but are not limited to:

- (a) Name and strength and description of the drug;
- (b) Route of administration, dosage, dosage form, continuity of therapy and refill information;
- (c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;
- (d) Side effects or adverse effects and interactions and therapeutic contraindications that may be encountered, including their avoidance, which may interfere with the proper use of the drug or device as was intended by the prescriber, and the action required if they occur;
- (e) Techniques for self-monitoring drug therapy; and
- (f) Action to be taken in the event of a missed dose.

(7) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration.

(8) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar related article including any component part or accessory which is:

- (a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;
- (b) Intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment or prevention of disease in man or other animal;
- (c) Intended to affect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended

purposes through chemical action within or on the body of man or other animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(9) "Dispense" or "dispensing" means the preparation and delivery of a drug pursuant to a lawful prescription drug order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription.

(10) "Distribute" means the delivery of a drug other than by administering or dispensing.

(11) "Drug" means:

(a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(12) "Drug order" means a prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes as defined in rules. Unless specifically differentiated, state law applicable to a prescription drug order is also applicable to a drug order.

(13) "Drug outlets" means all resident or nonresident pharmacies, business entities and other facilities where employees or personnel are engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices in or into Idaho.

(14) "Extern" means a bona fide student enrolled in an approved school or college of pharmacy who has not received his first professional degree in pharmacy.

(15) "Externship" means a structured practical experience program in pharmacy administered by a school or college of pharmacy.

(16) "Institutional facility" means a facility for which its primary purpose is to provide a physical environment for patients to obtain health care services and in which patients spend a majority of their time, as may be further defined by board rules.

(17) "Intern" means any person who has completed a course of study at an approved school or college of pharmacy, received the first professional degree in pharmacy and is registered with the board as a pharmacist intern. Interns must register with the board prior to commencement of an internship program.

(18) "Internship" means a postgraduate practical experience program under the supervision of a preceptor.

(19) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(20) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law.

(21) "Limited service outlet" means a resident or nonresident facility or business entity that is subject to registration by the board, pursuant to section 54-1729, Idaho Code, and has employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices but is not a retail pharmacy, institutional facility, manufacturer, wholesaler, veterinary drug outlet, nonresident central drug outlet or mail service pharmacy.

(22) "Mail service pharmacy" means a nonresident pharmacy that ships, mails or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law.

(23) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

- (a) By a pharmacist or practitioner as an incident to his administering, dispensing or, as authorized by board rule, distributing of a drug in the course of his professional practice; or
- (b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(24) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entabulating, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

(25) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription drug order and which are prepackaged for use by the consumer and labeled in accordance with state and federal law.

(26) "Nonresident" means a person or business entity located in the District of Columbia or a state other than Idaho that practices pharmacy including, but not limited to, pharmaceutical care services into Idaho.

(27) "Person" means an individual, corporation, partnership, association or any other legal entity.

(28) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or

prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

(29) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy or a pharmacist registered by this state who is located in another state or the District of Columbia and is engaged in the practice of pharmacy into Idaho, unless exempted.

(30) "Pharmacist-in-charge" (PIC) means a pharmacist whose qualifications, responsibilities and reporting requirements are defined in rule.

(31) "Pharmacy" means any facility, department or other place where prescription drug orders are filled or compounded and prescriptions are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

(32) "Practitioner" means a person licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(33) "Precursor" means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(34) "Preceptor" means a pharmacist licensed and in good standing who supervises the internship or externship training of a registered student pharmacist. The preceptor shall be actively engaged in the practice of pharmacy on a full-time employment basis.

(35) "Prescriber" means an individual currently licensed, registered or otherwise authorized to prescribe and administer drugs in the course of professional practice.

(36) "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements:

- (a) "Caution: Federal law prohibits dispensing without a prescription"; or
- (b) "Rx Only"; or
- (c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";

or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription drug order only or is restricted to use by practitioners only.

(37) "Prescription drug order" means a valid order of a practitioner for a drug or device for an ultimate user of the drug or device.

(38) "Prospective drug review" includes, but is not limited to, the following activities:

- (a) Evaluation of the prescription drug order for:
 - (i) Known allergies;
 - (ii) Rational therapy contraindications;
 - (iii) Reasonable dose and route of administration; and

- (iv) Reasonable directions for use.
- (b) Evaluation of the prescription drug order for duplication of therapy.
- (c) Evaluation of the prescription drug order for interactions:
 - (i) Drug-drug;
 - (ii) Drug-food; and
 - (iii) Drug-disease.
- (d) Evaluation of the prescription drug order for proper utilization:
 - (i) Over or under utilization; and
 - (ii) Abuse/misuse.

(39) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.

(40) "Sale" means every sale and includes:

- (a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;
- (b) Exposure, offer, or any other proffer;
- (c) Holding, storing or any other possession;
- (d) Dispensing, giving, delivering or any other supplying; and
- (e) Applying, administering or any other usage.

(41) "Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage.

(42) "Wholesaler" means a person engaged in the business of distributing legend drugs that he himself has not produced or prepared, to persons included in any of the classes named in subsection (2)(a) through (f) of section 54-1734, Idaho Code.

History.

I.C. § 54-1705, as added by 1979, ch. 131, § 3, p. 402; am. 1989, ch. 193, § 14, p. 475; am. 1992, ch. 179, § 2, p. 564; am. 1993, ch. 49, § 2, p. 126; am. 2000, ch. 103, § 1, p. 227; am. 2000, ch. 274, § 132, p. 799; am. 2002, ch.

26, § 1, p. 29; am. 2006, ch. 290, § 1, p. 888; am. 2008, ch. 51, § 1, p. 124; am. 2009, ch. 244, § 3, p. 748; am. 2011, ch. 135, § 2, p. 375; am. 2013, ch. 28, § 5, p. 52; am. 2013, ch. 270, § 1, p. 698; am. 2014, ch. 146, § 2, p. 391.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 28, rewrote the section, adding the definitions for "central drug outlet", "central pharmacist", "centralized pharmacy services", "mail service pharmacy", "nonresident", "pharmacist-in-charge" and deleting the definitions for "practice of telepharmacy", "practice of telepharmacy across state line", and "preceptor site."

The 2013 amendment, by ch. 270, inserted present subsection (5), and renumbered the subsequent subsections accordingly; and substituted "dispensing or, as authorized by

board rule, distributing" for "or, dispensing" in present paragraph (22)(a).

The 2014 amendment, by ch. 146, corrected the existing subsection designations, inserted present subsection (35), and redesignated the subsequent subsections accordingly.

Compiler's Notes.

The United States Pharmacopoeia, referred to in paragraphs (7)(a) and (10)(a), is a non-governmental official public standards-setting authority for prescription and over-the-counter medicines. See <http://www.usp.org>.

The National Formulary, referred to in paragraphs (7)(a) and (10)(a), contains standards for medicines, dosage forms, drug sub-

stances, excipients, medical devices, and dietary supplements. See <http://www.usp.org/USPNF>.

The Homeopathic Pharmacopoeia of the

United States, referred to in paragraph (10)(a), is the official compendium for homeopathic drug in the United States. See <http://hpus.com>.

54-1707. Membership. — The board of pharmacy shall consist of five (5) members. One (1) member shall be a representative of the public, and four (4) members shall be licensed pharmacists who possess the qualifications specified in section 54-1708, Idaho Code. The board of pharmacy shall have diverse pharmacy practice experience, with at least one (1) member having substantial experience in retail pharmacy and at least one (1) member having substantial experience in hospital pharmacy.

History.

I.C., § 54-1707, as added by 1979, ch. 131, § 3, p. 402; am. 2013, ch. 65, § 1, p. 161.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 65, added the last sentence.

54-1719. Medications — Drugs — Devices — Other materials. — The board of pharmacy shall also have the following responsibilities in regard to medications, drugs, devices and other materials used in this state in the diagnosis, mitigation and treatment or prevention of injury, illness and disease:

(1) The regulation of the sale at retail and the dispensing of medications, drugs, devices and other materials, including the method of dispensing in institutional facilities, and including the right to seize such drugs, devices and other materials found to be detrimental to the public health and welfare by the board after appropriate hearing as required under the administrative procedure act;

(2) The specifications of minimum professional and technical equipment, environment, supplies and procedures for the compounding, dispensing and distribution of such medications, drugs, devices and other materials within the practice of pharmacy;

(3) The control of the purity and quality of such medications, drugs, devices and other materials within the practice of pharmacy;

(4) The issuance and renewal of certificates of registration of drug outlets for purposes of ascertaining those persons engaged in the manufacture and distribution of drugs.

History.

I.C., § 54-1719, as added by 1979, ch. 131,

§ 3, p. 402; am. 1990, ch. 144, § 1, p. 324; am. 2013, ch. 270, § 2, p. 698.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 270, substi-

tuted “compounding, dispensing and distribution” for “compounding and/or dispensing” in

paragraph (2).

to in subdivision (1) of this section, is compiled as § 67-5201 et seq.

Compiler's Notes.

The administrative procedures act, referred

54-1720. Other duties — Powers — Authority. — The board of pharmacy shall have such other duties, powers, and authority as may be necessary to the enforcement of this chapter and to the enforcement of board rules made pursuant thereto, which shall include, but are not limited to, the following:

(1) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board.

(2) In addition to any statutory requirements, the board may require such surety bonds as it deems necessary to guarantee the performance and discharge of the duties of any officer or employee receiving and disbursing funds.

(3) The executive director of the board shall keep the seal of the board and shall affix it only in such manner as may be prescribed by the board.

(4) On or before the 60th day after the last day of each state fiscal year, the board shall submit to the governor a report summarizing its proceedings and activities during that fiscal year, together with a report of all moneys received and disbursed by the board. Such reports or comprehensive summaries or abstracts thereof, as determined by the board shall be made available to the public.

(5)(a) The board shall determine the fees to be collected for:

(i) Examinations and reexaminations, which fee shall not exceed two hundred fifty dollars (\$250);

(ii) The issuance of licenses, which fee shall not exceed two hundred fifty dollars (\$250);

(iii) The issuance and renewal of certificates of registration, which fee shall not exceed one hundred dollars (\$100), except the fee for nonresident registrations shall not exceed five hundred dollars (\$500) for initial registration and two hundred fifty dollars (\$250) thereafter for annual renewals.

(b) All fees or fines which shall be paid under the provisions of this chapter shall be paid over by the board to the treasurer of the state of Idaho, and shall be held by the state treasurer in the pharmacy account, which shall be paid out by the state treasurer upon warrant drawn by the state controller against said account. The state controller is hereby authorized, upon presentation of the proper vouchers of claims against the state, approved by the said board and the state board of examiners, as provided by law, to draw his warrant upon said account.

(6) The board may receive and expend moneys in addition to its annual appropriations, from parties other than the state, provided:

(a) Such moneys are awarded for the pursuit of a specific objective which the board is authorized to accomplish by this chapter, or which the board

is qualified to accomplish by reason of its jurisdiction or professional expertise;

(b) Such moneys are expended for the pursuit of the objective for which they are awarded;

(c) Activities connected with or occasioned by the expenditures of such moneys do not interfere with or impair the performance of the board's duties and responsibilities and do not conflict with the exercise of the board's powers as specified by this chapter;

(d) Such moneys are kept in a separate, special state account; and

(e) Periodic reports are made to the administrator, division of financial management, concerning the board's receipt and expenditure of such moneys.

(7) The board shall assign to each drug outlet under its jurisdiction a uniform state number.

(8) The board or its authorized representatives shall also have power to investigate and gather evidence concerning alleged violations of the provisions of this chapter or of the rules of the board.

(9)(a) Notwithstanding anything in this chapter to the contrary, whenever a duly authorized representative of the board finds or has probable cause to believe that any drug, or device is adulterated or misbranded within the meaning of the Idaho food, drug and cosmetic act, he shall affix to such drug or device a tag or other appropriate marking giving notice that such article is or is suspected of being adulterated or misbranded, has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board, its agent or the court. No person shall remove or dispose of such embargoed drug or device by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been instituted, without permission from the court.

(b) When a drug or device detained or embargoed under paragraph (a) of this subsection (9) has been declared by such representative to be adulterated or misbranded, the board shall, as soon as practical thereafter, petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated or misbranded, the board shall direct the immediate removal of the tag or other marking.

(c) If the court finds the detained or embargoed drug or device is adulterated or misbranded, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage and other proper expense shall be borne by the owner of such drug or device. When the adulteration or misbranding can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond has been posted, may direct that such drug or device be delivered to the owner thereof for such labeling or processing under the supervision of a board representative. Expense of such supervision shall

be paid by the owner. Such bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid.

(d) It is the duty of the attorney general to whom the board reports any violation of this subsection to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. Nothing in this subsection (9) shall be construed to require the board to report violations whenever the board believes the public's interest will be adequately served in the circumstances by a suitable written notice or warning.

(10) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers and authority in accordance with the administrative procedure act.

(11)(a) For the purpose of any proceedings held before the board as authorized by law, including the refusal, nonrenewal, revocation or suspension of licenses, registrations or certifications authorized by this chapter, or the imposition of fines or reprimands on persons holding such licenses, certification or registrations, the board may subpoena witnesses and compel their attendance, and may also at such time require the production of books, papers, documents or other memoranda. In any such proceeding before the board, any member of the board, or its designee, may administer oaths or affirmations to witnesses so appearing.

(b) If any person shall refuse to obey a subpoena so issued, or refuse to testify or produce any books, papers or documents called for by said subpoena, the board may make application to the district court of the county in which the proceeding is held, for an order of the court requiring the person to appear before the court, and to show cause why the person should not be compelled to testify, to produce such books, papers, memoranda or other documents required by the subpoena, or otherwise comply with its terms. The application shall set forth the action theretofore taken by the board to compel the attendance of the witness, the circumstances surrounding the failure of the witness to attend or otherwise comply with the subpoena, together with a brief statement of the reasons why compliance with the subpoena is necessary to the proceeding before the board.

(c) Upon the failure of a person to appear before the court at the time and place designated by it, the court may enter an order without further proceedings requiring the person to comply with the subpoena. Any person failing or refusing to obey such order of the court shall be punished for contempt of court as in other cases provided.

History.

I.C., § 54-1720, as added by 1979, ch. 131, § 3, p. 402; am. 1980, ch. 354, § 1, p. 915; am. 1985, ch. 152, § 2, p. 405; am. 1994, ch. 180, § 100, p. 420; am. 1994, ch. 348, § 1, p. 1104; am. 2013, ch. 28, § 6, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, substituted "this chapter" for "this act" throughout the section; rewrote paragraph (a) of subsection (5), which formerly read: "The board shall determine within thirty (30) days prior to the beginning of each state fiscal year the fees to be collected for:

"1. Examinations and reexaminations, which fee shall not exceed two hundred fifty dollars (\$250);

"2. The issuance of licenses, which fee shall not exceed two hundred fifty dollars (\$250);

"3. The issuance of certificates of registration and renewal certificates of registration, which fee shall not exceed one hundred dollars (\$100), except in the case of out-of-state mail service pharmacies licensed pursuant to section 54-1743, Idaho Code, in which case the fee shall not exceed two hundred fifty dollars (\$250);

"4. The certification of approved providers of continuing education courses, which fee shall not exceed three hundred dollars (\$300);"

substituted "division of financial management" for "division of budget, policy planning and coordination" in paragraph (e) of subsection (6); and deleted "coordinated where possible with all other states which adopt the same uniform numbering system" from the end of subsection (7).

Compiler's Notes.

The Idaho food, drug and cosmetic act, referred to in subsection (9)(a) of this section, is compiled as §§ 37-113 to 37-134.

The administrative procedures act, referred to in subsection (10) of this section, is compiled as § 67-5201 et seq.

54-1721. Unlawful practice. — (1) It shall be unlawful for any person or business entity to engage in the practice of pharmacy including, but not limited to, pharmaceutical care services in or into Idaho unless licensed or registered to so practice under the provisions of this chapter, except as provided herein:

(a) Physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of this state may deliver and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this state; and

(b) Nonresident pharmacists practicing pharmacy into Idaho who are employed by and practicing for an Idaho registered nonresident mail service pharmacy.

(2) Notwithstanding the provisions of subsection (1) of this section and any statute or rule to the contrary, persons who hold a valid and current license to practice practical or professional nursing in this state pursuant to sections 54-1407, 54-1408 and 54-1418, Idaho Code, and who are employed by one (1) of the public health districts established under section 39-408, Idaho Code, shall be permitted to engage in the labeling and delivery of refills of the following prepackaged items when such items have been prescribed to a patient by a licensed physician, licensed physician's assistant or licensed advanced practice nurse:

- (a) Prenatal vitamins;
- (b) Contraceptive drugs approved by the United States food and drug administration;
- (c) Antiviral drugs approved by the United States centers for disease control and prevention for treatment of sexually transmitted infection; and
- (d) Drugs approved by the United States centers for disease control and prevention for treatment of active and latent tuberculosis.

(3) It shall be unlawful for any person, not legally licensed or registered as a pharmacist, to take, use or exhibit the title of pharmacist or the title of druggist or apothecary, or any other title or description of like import.

(4) Any person who shall be found to have unlawfully engaged in the practice of pharmacy shall be subject to a fine not to exceed three thousand dollars (\$3,000) for each offense. Each such violation of this chapter or the rules promulgated hereunder pertaining to unlawfully engaging in the practice of pharmacy shall also constitute a misdemeanor punishable upon conviction as provided in the criminal code of this state.

History.

I.C., § 54-1721, as added by 1979, ch. 131,

§ 3, p. 402; am. 2010, ch. 346, § 1, p. 904; am. 2013, ch. 28, § 7, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, rewrote subsection (1), which formerly read: "It shall be unlawful for any person to engage in the practice of pharmacy unless licensed to so practice under the provisions of this act; provided, however, physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of this state may deliver and administer

prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this state"; in subsection (2), substituted "drugs" for "medications" in paragraphs (b), (c), and (d); inserted "or registered" near the middle of subsection (3); and substituted "this chapter" for "this act" near the beginning of the last sentence in subsection (4).

54-1723A. Registration to engage in the practice of pharmacy into Idaho. — (1) To obtain a registration to practice as a pharmacist into the state of Idaho, the applicant shall:

- (a) Be licensed and in good standing in the state from which the applicant practices pharmacy;
- (b) Submit a written application in the form prescribed by the board;
- (c) Pay the fee(s) specified by the board for the issuance of the registration; and
- (d) Comply with all other requirements of the board.

(2) A successful applicant for registration under this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.

(3) A successful applicant for registration under this section shall comply with the board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located, except as follows:

- (a) A technician shall not exceed the practice limitations for technicians in Idaho;
- (b) A pharmacist shall only substitute drug products in accordance with Idaho law;
- (c) A pharmacist shall only select drug products in accordance with Idaho law; and
- (d) A pharmacist shall not exceed the pharmacy staffing ratio, as defined in rule.

(4) Renewal shall be required annually and submitted to the board no

later than the thirtieth day of June. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration.

History.

I.C., § 54-1723A, as added by 2009, ch. 244, § 4, p. 748; am. 2010, ch. 116, § 1, p. 242; am.

2013, ch. 28, § 8, p. 52; am. 2014, ch. 34, § 1, p. 54.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, substituted “practice of pharmacy into Idaho” for “practice of telepharmacy across state lines” in the section heading and rewrote the section to the extent that a detailed comparison is impracticable, adding subsection (3).

The 2014 amendment, by ch. 34, in subsection (1), deleted former paragraph (d), which read: “Be located in one (1) of the fifty (50) states or the District of Columbia; and”, and redesignated former paragraph (e) as present paragraph (d).

54-1726. Grounds for discipline. — (1) The board of pharmacy may refuse to issue or renew, or may suspend, revoke or restrict the license or registration of any person, pursuant to the procedures set forth in chapter 52, title 67, Idaho Code, upon one (1) or more of the following grounds:

- (a) Unprofessional conduct as that term is defined by the rules of the board;
- (b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public;
- (c) Being found guilty, convicted or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following:
 - (i) Any felony;
 - (ii) Any act involving moral turpitude, gross immorality or which is related to the qualifications, functions or duties of a licensee; or
 - (iii) Violations of the pharmacy or drug laws of this state or rules pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government;
- (d) Fraud or intentional misrepresentation by a licensee in securing the issuance or renewal of a license.
- (e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license, or falsely using the title of pharmacist.
- (f) Being found by the board to be in violation of any of the provisions of this chapter, chapter 27, title 37, Idaho Code, or rules adopted pursuant to either chapter.

(2) Nonresident licensees and registrants shall be held accountable to the board for violations by its agents and employees and subject to the same grounds for discipline and penalties for their actions as set forth herein.

History.

I.C., § 54-1726, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 152, § 3, p. 405; am.

1988, ch. 12, § 1, p. 14; am. 1993, ch. 216, § 70, p. 587; am. 2013, ch. 28, § 9, p. 52.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 28, added the subsection (1) designation; substituted "li-

cense or registration" for "licenses" in the introductory language of subsection (1); and added subsection (2).

54-1728. Penalties and reinstatement. — (1) Upon the finding of the existence of grounds for discipline of any person or business entity holding a license or registration, seeking a license or registration, or a renewal license or registration under the provisions of this chapter, the board of pharmacy may impose one (1) or more of the following penalties:

- (a) Suspension of the offender's license or registration for a term to be determined by the board;
- (b) Revocation of the offender's license or registration;
- (c) Restriction of the offender's license or registration to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;
- (d) Refusal to renew offender's license or registration;
- (e) Placement of the offender on probation and supervision by the board for a period to be determined by the board;
- (f) Imposition of an administrative fine not to exceed two thousand dollars (\$2,000) plus costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts.

(2) The board may take any action against a nonresident licensee or registrant that the board can take against a resident licensee or registrant for violation of the laws of this state or the state in which it resides.

(3) The board may report any violation by a nonresident licensee or registrant, or its agent or employee, of the laws and rules of this state, the state in which it resides or the United States to any appropriate state or federal regulatory or licensing agency including, but not limited to, the regulatory agency of the state in which the nonresident licensee or registrant is a resident.

(4) The board may elect to not initiate an administrative action under Idaho law against a nonresident licensee or registrant upon report of a violation of law or rule of this state if the licensee's or registrant's home state commences an action for the violation complained of; provided however, that the board may elect to initiate an administrative action if the home state action is unreasonably delayed or the home state otherwise fails to take appropriate action for the reported violation.

(5) The suspension, revocation, restriction or other action taken against a licensee or registrant by a state licensing board with authority over a licensee's or registrant's professional license or registration or by the drug enforcement administration may result in the board's issuance of an order likewise suspending, revoking, restricting or otherwise affecting the license or registration in this state, without further proceeding, but subject to the effect of any modification or reversal by the issuing state or the drug enforcement administration.

(6) Any person whose license to practice pharmacy in this state has been suspended, revoked or restricted pursuant to this chapter, or any drug outlet whose certificate of registration has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(7) Nothing herein shall be construed as barring criminal prosecutions for violations of the act where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(8) All final decisions by the board shall be subject to judicial review pursuant to the procedures of the administrative procedure act.

History.

I.C., § 54-1728, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 152, § 4, p. 405; am.

1995, ch. 42, § 1, p. 63; am. 2013, ch. 28, § 10, p. 52.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 28, added present subsections (2) to (5) and redesignated former subsections (2) to (4) as present subsections (6) to (8); substituted "this chapter" for "this act" in the introductory paragraph in subsection (1) and twice in present subsection (6); in the introductory paragraph in subsection (1), inserted "or business entity"

near the beginning and "or registration" three times; and inserted "or registration" in paragraphs (1)(a) to (1)(d).

Compiler's Notes.

The administrative procedures act, referred to in subsection (8) of this section, is compiled as § 67-5201 et seq.

54-1729. Registration and licensure of facilities. — (1) All drug or device outlets doing business in or into Idaho shall:

- (a) If a nonresident, be licensed or registered and in good standing in the applicant's state of residence;
- (b) Submit a written application in the form prescribed by the board;
- (c) Pay the fee or fees specified by the board for the issuance of the registration or license; and
- (d) Have a PIC or director who is licensed or registered by the board, except manufacturers, wholesalers, veterinary drug outlets and limited service outlets without a pharmacy.

(2) Each drug or device outlet shall apply for a certificate of registration or a license in one (1) of the following classifications:

- (a) Retail pharmacy;
- (b) Institutional facility;
- (c) Manufacturer;
- (d) Wholesaler;
- (e) Veterinary drug outlet;
- (f) Nonresident central drug outlet;
- (g) Mail service pharmacy;
- (h) Limited service outlet.

(3) The board shall establish by rule under the powers granted to it under sections 54-1718 and 54-1719, Idaho Code, the criteria which each outlet, that has employees or personnel engaged in the practice of pharmacy, must meet to qualify for registration or licensure in each classification designated in subsection (2) of this section. The board may issue various types of certificates with varying restrictions to such outlets designated in subsection (2) of this section where the board deems it necessary by reason of the type of outlet requesting a certificate.

(4) It shall be lawful for an outlet registered or licensed under this section to sell and distribute nonprescription drugs. Outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule will be adopted by the board under this chapter which shall require the sale of nonprescription drugs by a pharmacist or under the supervision of a pharmacist or otherwise apply to or interfere with the sale and distribution of such medicines.

(5) If the regulatory board or licensing authority of the state in which a nonresident outlet is located fails or refuses to conduct an inspection or fails to obtain records or reports required by the board, upon reasonable notice to the nonresident outlet, the board may conduct an inspection. Nonresident outlets shall also pay the actual costs of the out-of-state inspection of the outlet, including the transportation, lodging and related expenses of the board's inspector.

(6) A successful applicant for registration under the provisions of this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.

(7) A successful applicant for registration under the provisions of this section shall comply with the board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located, except as follows:

- (a) A technician shall not exceed the practice limitations for technicians in Idaho;
- (b) A pharmacist shall only substitute drug products in accordance with the board's laws and rules;
- (c) A pharmacist shall only select drug products in accordance with the board's laws and rules; and
- (d) A pharmacy shall not exceed the pharmacy staffing ratio as defined in rule.

(8) Renewal shall be required annually and submitted to the board no later than June 30. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration or licensure.

History.

I.C., § 54-1729, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 21, § 1, p. 33; am. 2009, ch. 244, § 5, p. 748; am. 2011, ch. 135, § 3, p. 375; am. 2013, ch. 28, § 11, p. 52; am. 2014, ch. 34, § 2, p. 54.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, rewrote subsection (1), which formerly read: "All drug or device outlets doing business in or into Idaho shall annually register with or be licensed by, as applicable, the board of pharmacy"; substituted "Nonresident central drug outlet" for "Telepharmacy across state lines" in paragraph (2)(f); in the last sentence in subsection (3), substituted "such outlets designated in subsection (2) of this section" for "such limited service outlets in subsection (2)" near the middle and deleted "drug" preceding "outlet" near the end; in subsection (4), substituted "an outlet" for "a drug outlet" in the first sentence, deleted "Drug" from the beginning of the second sentence, and deleted "licensed" preceding "pharmacist" twice in the last sentence; rewrote subsection (5), which formerly read: "Drug outlets registered under

subsection (2)(f) of this section shall pay the same registration fee as those registering under subsection (2)(b) of this section, but shall also pay the actual costs of the out-of-state inspection of the drug outlet as may be required by the board, including the transportation, lodging and related expenses of the board's inspector. Nothing in this section shall preclude the board, in lieu of an inspection by the board, from relying on an inspection of the drug outlet conducted by the regulatory authority of the state within which the drug outlet is located"; and added subsections (6) to (8).

The 2014 amendment, by ch. 34, in subsection (1), deleted former paragraph (d), which read: "Be located in one (1) of the fifty (50) states or the District of Columbia; and" and redesignated former paragraph (e) as present paragraph (d).

54-1730. Drug outlet application procedures. — (1) The board shall specify by rule the registration procedures to be followed including, but not limited to, specification of forms for use in applying for such certificates of registration and times, places and fees for filing such application; provided however, the annual fee for an original or renewal certificate shall not exceed one hundred dollars (\$100), except the fee for nonresident pharmacies or outlets shall not exceed five hundred dollars (\$500) for initial registration and two hundred fifty dollars (\$250) thereafter for annual renewals.

(2) Applications for certificates of registration shall include the following information about the proposed outlet:

- (a) Ownership;
- (b) Location;
- (c) Identity of pharmacist licensed or registered to practice in the state, who shall be the pharmacist in charge of the outlet, where one (1) is required by this chapter, and such further information as the board may deem necessary.

(3) Certificates of registration issued by the board pursuant to this chapter shall not be transferable or assignable.

(4) The board shall specify by rule minimum standards for the professional responsibility in the conduct of any outlet that has employees or personnel engaged in the practice of pharmacy. The board is specifically authorized to require that the portion of the facility to which such certificate of registration applies be operated only under the direct supervision of no less than one (1) pharmacist licensed to practice in this state and not otherwise, and to provide such other special requirements as deemed necessary.

History.

I.C., § 54-1730, as added by 1979, ch. 131, § 3, p. 402; am. 2013, ch. 28, § 12, p. 52.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 28, added "Drug outlet" at the beginning of the section heading; in subsection (1), deleted "or regulation" preceding "the registration procedures" near the beginning and added "except the fee for nonresident pharmacies or outlets shall not exceed five hundred dollars (\$500) for initial registration and two hundred fifty dollars (\$250) thereafter for annual renewals" at the end; in subsection (2), deleted "drug"

preceding "outlet" at the end of the introductory paragraph and near the middle of paragraph (c); in paragraph (2)(c), inserted "or registered" near the beginning and substituted "this chapter" for "this act" near the middle; substituted "this chapter" for "this act" in subsection (3); in the first sentence in subsection (4), deleted "and regulation" preceding "minimum standards" near the beginning and deleted "drug" preceding "outlet" near the middle.

54-1732. Violations and penalties. — (1) No drug outlet designated in section 54-1729, Idaho Code, shall be operated until a certificate of registration has been issued to said facility by the board. Upon the finding of a violation of this subsection, the board may impose one (1) or more of the penalties enumerated in section 54-1728, Idaho Code.

(2) Reinstatement of a certificate that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified in section 54-1728(6), Idaho Code.

(3) The following acts, or the failure to act, and the causing of any such act or failure are unlawful:

(a) The sale, delivery or administration of any prescription drug or legend drug unless:

(i) Such legend drug is dispensed or delivered by a pharmacist upon an original prescription, drug order or prescription drug order by a practitioner in good faith in the course of his practice. Any person violating the provisions of this subparagraph shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars (\$5,000) or by both such fine and imprisonment.

(ii) In the case of a legend drug dispensed by a pharmacist or prescriber, there is a label affixed to the immediate container in which such drug is dispensed. Any person violating this subparagraph shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500). Nothing in this subparagraph prohibits a practitioner from delivering professional samples of legend drugs in their original containers in the course of his practice when oral directions for use are given at the time of such delivery.

(b) The refilling of any prescription or drug order for a legend drug except as designated on the prescription or drug order, or by the authorization of the practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(c) The possession or use of a legend drug or a precursor by any person unless such person obtains such drug on the prescription or drug order of

a practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(d) The failure to keep records as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(e) The refusal to make available and to accord full opportunity to check any record, as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(f) It is unlawful to:

(i) Obtain or attempt to obtain a legend drug or procure or attempt to procure the administration of a legend drug by fraud, deceit, misrepresentation or subterfuge; by the forgery or alteration of a prescription, drug order, or of any written order; by the concealment of a material fact; or by the use of a false name or the giving of a false address.

(ii) Communicate information to a physician in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug. Any such communication shall not be deemed a privileged communication.

(iii) Intentionally make a false statement in any prescription, drug order, order, report or record required by this chapter.

(iv) For the purpose of obtaining a legend drug to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other person.

(v) Make or utter any false or forged prescription or false drug order or forged written order.

(vi) Affix any false or forged label to a package or receptacle containing legend drugs. This subparagraph does not apply to law enforcement agencies or their representatives while engaged in enforcing state and federal drug laws.

(vii) Wholesale or retail any prescription or legend drug to any person in this state not entitled by law to deliver such drug to another.

Every violation of subsection (3)(f)(i) through (vi) of this section shall be a misdemeanor and any person convicted thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or fined not more than one thousand dollars (\$1,000), or punished by both such fine and imprisonment. Any person violating subsection (3)(f)(vii) of this section is guilty of a felony and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars (\$5,000), or by both such fine and imprisonment.

(4) Provided however, that a veterinarian may dispense or deliver a legend drug prescribed for an animal upon the prescription, drug order, or

prescription drug order of another veterinarian. The label shall be affixed pursuant to subsection (3) (a) (ii) of this section, and penalties for violations of the provisions of this subsection shall be as provided in this section for like violations by a pharmacist.

(5) The ultimate user of a legend drug who has lawfully obtained such legend drug may deliver, without being registered, the legend drug to another person for the purpose of disposal of the legend drug if the person receiving the legend drug for purposes of disposal is authorized under a state or federal law or regulation to engage in such activity.

History.

I.C., § 54-1732, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 43, § 1, p. 90; am.

2010, ch. 113, § 1, p. 231; am. 2013, ch. 28,

§ 13, p. 52; am. 2014, ch. 146, § 3, p. 391.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, substituted “section 54-1728(6)” for “section 54-1728(2)” near the end of subsection (2).

The 2014 amendment, by ch. 146, rewrote the first sentence in paragraph (3)(a)(ii) relat-

ing to the labeling of a legend drug; moved the former last paragraph in the section to the end of subsection (3); and substituted “be affixed pursuant to” for “comply with the provisions of” in the second sentence in subsection (4).

54-1733. Validity of prescription drug orders. — (1) Except as provided in subsection (4) of this section, a prescription drug order for a legend drug is not valid unless it is issued for a legitimate medical purpose arising from a prescriber-patient relationship which includes a documented patient evaluation adequate to establish diagnoses and identify underlying conditions and/or contraindications to the treatment. Treatment, including issuing a prescription drug order, based solely on an online questionnaire or consultation outside of an ongoing clinical relationship does not constitute a legitimate medical purpose. A prescription drug order may be issued either:

- (a) By a practitioner acting in the usual course of his profession; or
- (b) By a physician, dentist, veterinarian, scientific investigator or other person, other than a pharmacist, who is licensed in a jurisdiction other than the state of Idaho and is permitted by such license to dispense, conduct research with respect to or administer the prescribed legend drugs in the course of his professional practice or research in such jurisdiction, so long as the individual is acting within the jurisdiction, scope and authority of his license when issuing the prescription drug order.
- (c) The prescription drug order may be signed and sent electronically pursuant to chapter 50, title 28, Idaho Code.
- (d) Transmission of prescription drug order. In addition to delivery of the original signed written prescription drug order to a licensed pharmacy:
 - (i) A prescription drug order that has been signed by the practitioner may be received by a licensed pharmacy for dispensing purposes through a facsimile transmission from the prescribing practitioner or the practitioner’s agent, or from an institutional facility for a patient or resident in such facility;
 - (ii) A prescription drug order may also be received by a licensed

pharmacist verbally from the practitioner, the practitioner's agent or from a licensed practical nurse or licensed professional nurse in an institutional facility for a patient or resident in such facility;

(iii) A prescription drug order received verbally from the practitioner by a licensed practical nurse or licensed professional nurse in a licensed institutional facility for a patient or resident in such facility may also be sent by facsimile transmission from the institutional facility to a licensed pharmacy for dispensing purposes provided the transmitted document includes the name of the prescriber issuing the prescription drug order, the name of the nurse who transcribed the order and the name of the person who sent the facsimile.

(e) In the event that there are no refills remaining on an existing prescription drug order, and the pharmacist requests a new prescription drug order from the practitioner, the practitioner's agent, after obtaining practitioner authorization, may sign and return the request via facsimile so long as:

- (i) The request is generated from the pharmacy;
- (ii) The request is for medication that the patient is currently taking;
- (iii) There are no changes to the type of drug, its strength or directions for the continuation of therapy;
- (iv) The practitioner's agent's transmission is received via facsimile from the practitioner's office; and
- (v) The request, which is subsequently transmitted back to the requesting pharmacy by the practitioner's agent, contains all components of a valid prescription drug order.

(2) It is unlawful for a practitioner to knowingly issue an invalid prescription drug order for a legend drug.

(3) It is unlawful for a pharmacist or veterinarian to knowingly fill an invalid prescription drug order for a legend drug.

(4) A prescriber who is otherwise authorized to perform any of the activities listed in this subsection may prescribe or perform any of the following activities for a patient with whom the prescriber does not have a prescriber-patient relationship under the following circumstances:

- (a) Writing initial admission orders for a newly hospitalized patient;
- (b) Writing a prescription for a patient of another prescriber for whom the prescriber is taking call;
- (c) Writing a prescription for a patient examined by a physician assistant, advanced practice registered nurse or other licensed practitioner with whom the prescriber has a supervisory or collaborative relationship;
- (d) Writing a prescription for medication on a short-term basis for a new patient prior to the patient's first appointment;
- (e) In emergency situations where life or health of the patient is in imminent danger;
- (f) In emergencies that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
- (g) Epinephrine auto-injectors in the name of a school pursuant to section 33-520A, Idaho Code;

(h) If a prescriber makes a diagnosis of a sexually transmitted disease in a patient, the prescriber may prescribe or dispense antibiotics to the infected patient's named sexual partner or partners for treatment of the sexually transmitted disease as recommended by the most current centers for disease control and prevention (CDC) guidelines.

(5) Prescribing drugs to individuals without a prescriber-patient relationship and not in accordance with this section shall be unprofessional conduct and the prescriber shall be subject to discipline according to the provisions of the Idaho Code chapter pursuant to which the prescriber is licensed, certified or registered.

History.

I.C., § 54-1733, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 43, § 2, p. 90; am. 2000, ch. 276, § 2, p. 898; am. 2006, ch. 117, § 1, p. 330; am. 2006, ch. 290, § 2, p. 888; am.

2007, ch. 90, § 25, p. 246; am. 2007, ch. 245, § 1, p. 722; am. 2010, ch. 112, § 1, p. 229; am. 2011, ch. 135, § 4, p. 375; am. 2012, ch. 163, § 1, p. 442; am. 2014, ch. 146, § 4, p. 391.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 146, inserted

paragraph (4)(g) and redesignated former paragraph (4)(g) as paragraph (4)(h).

54-1734. Exceptions. — The provisions of this chapter pertaining to the sale of prescription drugs are not applicable:

(1) To the sale of legend drugs to persons included in any of the classes named in paragraphs (a) through (g) in subsection (2) of this section, or to the agents or employees of such persons, for use in the usual and lawful course of their business or practice or in the performance of their lawful official duties, as the case may be; or

(2) To the possession of legend drugs by such persons or their agents or employees for such use:

(a) Pharmacists;

(b) Practitioners;

(c) Persons who procure legend drugs for handling by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale;

(d) Hospitals and other institutions which procure legend drugs for lawful administration by practitioners;

(e) Manufacturers and wholesalers;

(f) Carriers and warehousemen; and

(g) Schools possessing stock supplies of epinephrine auto-injectors pursuant to section 33-520A, Idaho Code.

(3) To the sale by a business not licensed as a pharmacy of legend drugs (excluding controlled substances) designated for veterinary use which require a prescription, provided that:

(a) The business is registered and licensed with the board of pharmacy.

(b) The sale is authorized by a written or oral order from a veterinarian licensed in this or another state.

1. Prior to dispensing an order from an out-of-state veterinarian, the seller must confirm and document that the veterinarian is properly licensed in his state.

2. Oral orders must be confirmed by the veterinarian in writing no later than seven (7) days after the seller receives the order.

(c) The written order or confirmation of an oral order must be retained on the premises of the business for at least two (2) years after the original date of the order.

History.

I.C., § 54-1734, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 21, § 2, p. 33; am.

2010, ch. 64, § 1, p. 113; am. 2014, ch. 146, § 5, p. 391.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 146, updated

a reference in subsection (1) and added paragraph (2)(g).

54-1740. Short title. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1740, as added by 1989, ch. 178, § 1, p. 438.

54-1741. Legislative declaration. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1741, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 2, p. 1104.

54-1742. Definition — Out-of-state mail service pharmacy. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1742, as added by 1989, ch. 178, § 1, p. 438.

54-1743. License requirements. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1743, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 3, p. 1104.

54-1744. Notifications. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1744, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 4, p. 1104.

54-1745. Inspections. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1745, as added by 1989, ch. 178, § 1, p. 438.

54-1746. Product selection of prescribed drugs. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1746, as added by 1989, ch. 178, § 1, p. 438.

54-1747. Patient communication. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1747, as added by 1989, ch. 178, § 1, p. 438.

54-1748. Violations and penalties. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1748, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 5, p. 1104.

54-1752. Definitions. — As used in sections 54-1751 through 54-1759, Idaho Code:

(1) “Authentication” means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(2) “Authorized distributor of record” means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer’s prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale dis-

tributor, as defined in section 1504 of the Internal Revenue Code, complies with the following:

- (a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and
- (b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(3) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(4) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with the federal food and drug administration's implementation of the prescription drug marketing act.

(5) "Drop shipment" means the sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third party logistics provider or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

(6) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.

(7) "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices, consistent with the federal food and drug administration definition of "manufacturer" under its regulations and guidance implementing the prescription drug marketing act.

(8) "Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(9) "Normal distribution channel" means a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third party logistics provider, from that manufacturer to that manufacturer's exclusive distributor, or from that

manufacturer directly or through its colicensed partner, third party logistics provider or manufacturer's exclusive distributor to a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, either directly or by drop shipment, to:

- (a) A pharmacy to a patient;
- (b) Other designated persons authorized by law to dispense or administer such drug to a patient;
- (c) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;
- (d) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or
- (e) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(10) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug.

(11) "Person" means an individual, corporation, government, governmental subdivision or agency, partnership, business trust, association or any other legal entity.

(12) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.

(13) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing product to the patient.

(14) "Repackager" means a person who repackages.

(15) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. Such third party logistics provider must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(16) "Veterinary pharmacy" means a business properly licensed as a pharmacy engaging exclusively in the preparation and dispensing of prescription drugs for veterinary prescribed use.

(17) "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs including, but not limited to:

- (a) Manufacturers;
- (b) Repackagers;
- (c) Own-label distributors;
- (d) Private-label distributors;
- (e) Jobbers;
- (f) Brokers;
- (g) Warehouses, including manufacturers' and distributors' warehouses;
- (h) Manufacturers' exclusive distributors;
- (i) Authorized distributors of record;
- (j) Drug wholesalers or distributors;
- (k) Independent wholesale drug traders;
- (l) Specialty wholesale distributors;
- (m) Third party logistics providers;
- (n) Retail pharmacies that conduct wholesale distribution; and
- (o) Chain pharmacy warehouses that conduct wholesale distribution.

To be considered part of the normal distribution channel, such wholesale distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must also be an authorized distributor of record.

(18) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

- (a) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.
- (b) The sale, purchase, distribution, trade or transfer of a prescription drug or offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical reasons.
- (c) The distribution of prescription drug samples by manufacturers' representatives.
- (d) Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.
- (e) Drug donations, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.
- (f) The sale of minimal quantities of prescription drugs by pharmacies to licensed practitioners for office use.
- (g) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.
- (h) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.
- (i) The sale, purchase, distribution, trade or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying

authorized distributor of record states in writing that the prescription drug being supplied had, until that time, been exclusively in the normal distribution channel.

(j) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.

(k) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer or third party returns processor, including a reverse distributor.

(l) The sale of a prescription drug by a veterinary pharmacy to the prescribing veterinarian in which:

- (i) The prescribing veterinarian takes title but not physical possession of such prescription drug and invoices the owner or person having custody of the animal for whom the prescription drug is intended; and
- (ii) Pursuant to a valid prescription drug order the veterinary pharmacy labels and delivers the prescription drug directly to the owner or person having custody of the animal for whom the prescription drug is intended.

History.

I.C., § 54-1752, as added by 2007, ch. 319, § 1, p. 949; am. 2009, ch. 105, § 1, p. 320; am. 2009, ch. 143, § 1, p. 428; am. 2011, ch. 144, § 1, p. 405; am. 2013, ch. 270, § 3, p. 698; am. 2014, ch. 34, § 3, p. 54.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 270, deleted "retail" preceding "pharmacies" in paragraph (17)(f).

The 2014 amendment, by ch. 34, inserted present subsection (11) and redesignated the subsequent subsections accordingly.

Federal References.

Section 1504 of the Internal Revenue Code, referred to in the introductory paragraph of

subsection (2), is codified as 26 U.S.C.S. § 1504.

The prescription drug marketing act, referred to in subsections (4) and (7), is Public Law 100-293, codified as 21 USCS §§ 331, 333, 351, 353, and 381.

For the regulations implementing the prescription drug marketing act, referred to in subsection (7), see 21 C.F.R. § 203.1. et seq.

Section 503(b) of the federal food, drug and cosmetic act, referred to in subsection (12), is codified as 21 U.S.C.S. § 353(c).

54-1754. Restrictions on transactions. — (1) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of expired, damaged, recalled or otherwise nonsaleable pharmaceutical product shall be distributed by the receiving wholesale distributor only to either the original manufacturer or third party returns processor, including a reverse distributor. The returns or exchanges of prescription drugs, saleable or otherwise, including any redistribution by a receiving wholesaler, shall not be subject to the pedigree requirement of section 54-1755, Idaho Code, so long as they are exempt from pedigree under the federal food and drug administration's currently applicable prescription

drug marketing act guidance. Wholesale distributors and pharmacies shall be held accountable for administering their returns process and ensuring that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.

(2) A manufacturer or wholesale distributor shall furnish prescription drugs only to a person licensed by the appropriate state licensing agency to manufacture, distribute, dispense, conduct research or independently administer such prescription drugs. A manufacturer or wholesale distributor shall furnish a scheduled controlled substance listed in section 37-2705, 37-2707, 37-2709, 37-2711 or 37-2713, Idaho Code, only to a person who has been issued a valid controlled substance registration by the United States drug enforcement administration and the Idaho board of pharmacy, unless exempted by state or federal law.

(3) Prescription drugs furnished by a manufacturer or wholesale distributor shall be delivered only to the premises listed on the license; provided that the manufacturer or wholesale distributor may furnish prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(a) The identity and authorization of the recipient is properly established; and

(b) This method of receipt is employed only to meet the immediate needs of a particular patient of the authorized person.

(4) Prescription drugs may be furnished to a hospital pharmacy receiving area provided that a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug so received. Any discrepancy between receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor by the next business day after the delivery to the pharmacy receiving area.

(5) A manufacturer or wholesale distributor shall not accept payment for, or allow the use of, a person's credit to establish an account for the purchase of prescription drugs from any person other than the owner(s) of record, the chief executive officer or the chief financial officer listed on the license of a person legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs must bear the name of the licensee.

History.

I.C., § 54-1754, as added by 2007, ch. 319, § 1, p. 949; am. 2014, ch. 34, § 4, p. 54.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 34, rewrote subsection (2), which formerly read: "A manufacturer or wholesale distributor shall furnish prescription drugs only to a person licensed by the board or other appropriate state licensing authorities. Before furnishing pre-

scription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor shall affirmatively verify that the person is legally authorized to receive the prescription drugs by contacting the appropriate state licensing authorities".

54-1761. Definitions. — As used in sections 54-1760 through 54-1765, Idaho Code:

(1) "Legend drug" has the same meaning as provided in section 54-1705(36), Idaho Code.

(2) "Medically indigent" means any person who is in need of a legend drug and who is not eligible for medicaid or medicare, who cannot afford private prescription drug insurance or who does not have income and other resources available sufficient to pay for the legend drug.

(3) "Qualifying charitable clinic or center" means a community health center as defined in section 39-3203, Idaho Code, and means a free medical clinic as defined in section 39-7702, Idaho Code, acting in consultation with a pharmacist licensed in the state of Idaho.

History.

I.C., § 54-1761, as added by 2009, ch. 143, § 2, p. 428; am. 2010, ch. 79, § 19, p. 133; am. 2010, ch. 348, § 1, p. 909; am. 2011, ch. 135, § 5, p. 375; am. 2013, ch. 28, § 15, p. 52; am. 2013, ch. 270, § 5, p. 698; am. 2014, ch. 146, § 7, p. 391.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 28, updated the reference in subsection (1) in light of the 2013 amendment of § 54-1705.

The 2013 amendment, by ch. 270, updated the reference in subsection (1) in light of the 2013 amendment of § 54-1705.

The 2014 amendment, by ch. 146, updated the reference in subsection (1) in light of the 2014 amendment of § 54-1705.

CHAPTER 18

PHYSICIANS AND SURGEONS

MEDICAL PRACTICE ACT

SECTION.

SECTION.

54-1806. Powers and duties.

54-1807A. Physician assistants — Supervis-

ing physicians — Physician assistant advisory committee.

54-1814. Grounds for medical discipline.

MEDICAL PRACTICE ACT

54-1806. Powers and duties. — The board shall have the authority to:

(1) Hire or appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners.

(2) Establish pursuant to the administrative procedure act rules for administration of this chapter, including rules governing all activities of persons employed as physician's assistants by persons licensed to practice medicine in this state. The board shall adopt rules pursuant to the administrative procedure act establishing procedures for the receipt of complaints and for the investigation and disposition thereof. Such rules shall provide for notice to a person when the board has authorized the committee to investigate that person and shall provide an opportunity for a person under investigation to meet with the committee or its staff before the initiation of formal disciplinary proceedings by the board.

(3) Conduct investigations and examinations and hold hearings as authorized by this section and by section 54-1806A, Idaho Code.

(4) The board shall have the power in any investigation or disciplinary proceeding pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner consistent with rules adopted by the board pursuant to the administrative procedure act, and upon a determination that there is good cause the board shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records, and papers as it may deem appropriate for any investigation, deposition or hearing. For that purpose the board may issue a subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where such witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid from any funds in the state treasury in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court of any county in this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board to compel compliance with the subpoena by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such formal contested case shall have the same right of subpoena upon making application to the board therefor.

(5) Seek injunctive relief prohibiting the unlawful practice of medicine.

(6) Make and enter into contracts.

(7) Operate, manage, superintend and control the licensure of physicians.

(8) Develop and submit a proposed budget setting forth the amount necessary to perform its functions.

(9) Perform such other duties as set forth in the laws of this state.

(10) Provide such other services and perform such other functions as are necessary to fulfill its responsibilities.

(11) Provide for reasonable fees through rules for administrative costs and assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee has been found to be in violation of the provisions of this chapter.

(12) Prepare an annual report.

(13) Share with the department of labor personal identifying information of persons licensed under the provisions of this chapter necessary for the department of labor to identify workforce shortage areas in Idaho. The information provided to the department of labor concerning any person licensed under this chapter shall remain confidential and not subject to public disclosure, as required in section 9-340C, Idaho Code.

History.

I.C., § 54-1806, as added by 1977, ch. 199, § 7, p. 536; am. 2000, ch. 332, § 2, p. 1112; am. 2010, ch. 88, § 1, p. 169; am. 2013, ch. 115, § 1, p. 276.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 115, inserted "the provisions of" near the end of subsection (11) and added subsection (13).

RESEARCH REFERENCES

A.L.R. — Pretrial discovery in disciplinary proceedings against physician. 65 A.L.R.6th 295.

54-1807A. Physician assistants — Supervising physicians — Physician assistant advisory committee. — (1) Physician assistants must be licensed by the board prior to the commencement of activities which may involve the practice of medicine in this state. The licensure requirements for physician assistants shall include passage of an examination acceptable to the board and submission of a completed application to the board on forms furnished by the board. All applicants for original licensure as a physician assistant shall submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded by the board to the Idaho department of law enforcement and to the federal bureau of investigation identification division. The board shall determine and limit the scope of activities of each physician assistant on the basis of completed courses of study or programs of instruction received. Upon licensure, the board shall authorize each physician assistant to assist a physician or group of physicians who are qualified and approved by the board to supervise physician assistants to engage in activities as limited by the board. The board shall fix a license fee. All physician assistants shall renew their licenses annually.

(2) After a supervising physician or alternate supervising physician receives board approval to supervise a physician assistant, the physician may delegate medical services to the physician assistant as set forth in the delegation of services agreement on forms approved by and filed with the board. The physician assistant may perform delegated medical services in any setting authorized by the supervising physician or alternate supervising physician and the board, including clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other health care institutions.

(3) The supervising physician and alternate supervising physician are responsible for all aspects of the performance of a physician assistant whether or not the supervising physician or alternate supervising physician actually pays the physician assistant a salary. The supervising physician and alternate supervising physician are responsible for supervising the physician assistant and ensuring that the medical services performed by the physician assistant are within the physician assistant's scope of training

and experience and have been properly delegated by the supervising physician or alternate supervising physician.

(4) Supervision by a supervising physician or alternate supervising physician shall be continuous but shall not be construed as necessarily requiring the constant physical presence of the supervising physician or alternate supervising physician at the time and place where medical services are performed by the physician assistant.

(5) A supervising physician or alternate supervising physician shall not delegate to a physician assistant the performance of any medical services for which the supervising physician or alternate supervising physician does not have training or experience and does not perform.

(6) A physician assistant or a group of physician assistants may independently own a medical practice in this state provided that the supervising physician, alternate supervising physician and each physician assistant comply with all requirements of this section and board rules. Each physician assistant must be licensed, registered or certified as a physician assistant in any state, territory or jurisdiction of the United States for at least two (2) years before the physician assistant may independently own a practice in this state.

(7) A physician assistant advisory committee is hereby established as follows:

(a) The physician assistant advisory committee shall consist of three (3) members appointed by the board. In making appointments to fill a vacancy created by the expiration of a term, the board shall give consideration to recommendations made by professional organizations of physician assistants and physicians. The board shall send notice to such professional organizations requesting recommendations. If recommendations from such professional organizations are not received by the board within sixty (60) days of notification, the board may appoint any qualified individual without consideration of any such recommendations. In the event of a vacancy in any unexpired term, the professional organizations may recommend, as soon as practical, at least two (2) and not more than three (3) persons to fill that vacancy. As soon as practical, the board shall appoint one (1) person to complete the unexpired term. If such professional organizations do not provide recommendations, the board shall appoint a person to complete the unexpired term without consideration of any such recommendations. The board may remove any committee member for misconduct, incompetency or neglect of duty after giving the member a written statement of the charges and an opportunity to be heard thereon. The executive director of the Idaho state board of medicine shall serve as the executive director to the physician assistant advisory committee.

(b) Each member of the physician assistant advisory committee shall be currently licensed as a physician assistant in Idaho and shall have actively practiced as a physician assistant in Idaho for three (3) years immediately preceding appointment. Members will serve a term of three (3) years and terms will be staggered. Members may serve two (2) successive terms. The committee shall elect a chairman from its member-

ship. The committee shall meet as often as necessary to fulfill its responsibilities. Members will be compensated according to section 59-509(n), Idaho Code.

(c) The physician assistant advisory committee shall not have authority to revoke licenses or impose limitations or conditions on licenses issued pursuant to this chapter. The committee has authority to make recommendations to the board. The board shall make all final decisions with respect thereto.

(d) The physician assistant advisory committee shall work in the following areas in conjunction with and make recommendations to the board and shall perform other duties and functions assigned to it by the board, including:

- (i) Evaluating the qualifications of applicants for licensure and registration;
- (ii) Performing investigations of misconduct and making recommendations regarding discipline;
- (iii) Maintaining a list of currently licensed physician assistants and graduate physician assistants in this state; and
- (iv) Advising the board on rule changes necessary to license and regulate physician assistants and graduate physician assistants in this state.

History.

I.C., § 54-1807A, as added by 2010, ch. 89, § 3, p. 170; am. 2013, ch. 47, § 1, p. 101.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 47, substituted “section 59-509(n)” for “section 59-5409(h)” near the end of paragraph (7)(b).

Compiler’s Notes.

The Idaho central criminal history database, referred to in subsection (1), is the state’s central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.state.id.us/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in subsection (1), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjis/iafis.htm>.

Effective Dates.

Section 2 of S.L. 2013, ch. 47 declared an emergency. Approved March 12, 2013.

54-1813. Temporary license and registration.

JUDICIAL DECISIONS

Immunity.

The plain, usual, and ordinary meaning of this section suggests that it provides immunity to any person for communications to the board of medicine made in connection with

physician performance. There is no requirement that the communication be authored by a physician. *Noak v. Idaho Dep’t of Corr.*, 152 Idaho 305, 271 P.3d 703 (2012).

54-1814. Grounds for medical discipline. — Every person licensed to practice medicine, licensed to practice as a physician assistant or registered

as an extern, intern or resident in this state is subject to discipline by the board pursuant to the procedures set forth in this chapter and rules promulgated pursuant thereto upon any of the following grounds:

- (1) Conviction of a felony, or a crime involving moral turpitude, or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude.
- (2) Use of false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of this act.
- (3) Practicing medicine under a false or assumed name in this or any other state.
- (4) Advertising the practice of medicine in any unethical or unprofessional manner.
- (5) Knowingly aiding or abetting any person to practice medicine who is not authorized to practice medicine as provided in this chapter.
- (6) Performing or procuring an unlawful abortion or aiding or abetting the performing or procuring of an unlawful abortion.
- (7) The provision of health care which fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public.
- (8) Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for referral.
- (9) Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.
- (10) Inability to obtain or renew a license to practice medicine, or revocation of, or suspension of a license to practice medicine by any other state, territory, district of the United States or Canada, unless it can be shown that such action was not related to the competence of the person to practice medicine or to any conduct designated herein.
- (11) Prescribing or furnishing narcotic or hallucinogenic drugs to addicted persons to maintain their addictions and level of usage without attempting to treat the primary condition requiring the use of narcotics.
- (12) Prescribing or furnishing narcotic, hypnotic, hallucinogenic, stimulating or dangerous drugs for other than treatment of any disease, injury or medical condition.
- (13) Failure to safeguard the confidentiality of medical records or other medical information pertaining to identifiable patients, except as required or authorized by law.
- (14) The direct promotion by a physician of the sale of drugs, devices, appliances or goods to a patient that are unnecessary and not medically indicated.
- (15) Abandonment of a patient.
- (16) Willfully and intentionally representing that a manifestly incurable disease or injury or other manifestly incurable condition can be permanently cured.
- (17) Failure to supervise the activities of externs, interns, residents,

nurse practitioners, certified nurse-midwives, clinical nurse specialists, or physician assistants.

(18) Practicing medicine when a license pursuant to this chapter is suspended, revoked or inactive.

(19) Practicing medicine in violation of a voluntary restriction or terms of probation pursuant to this chapter.

(20) Refusing to divulge to the board upon demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment, or infirmity.

(21) Commission of any act constituting a felony or commission of any act constituting a crime involving moral turpitude.

(22) Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.

(23) Being convicted of or pleading guilty to driving under the influence of alcohol, drugs or other intoxicating substances or being convicted of or pleading guilty to other drug or alcohol related criminal charges.

(24) Failure to comply with a board order entered by the board.

History.

I.C., § 54-1814, as added by 1977, ch. 199, § 14, p. 536; am. 1979, ch. 58, § 1, p. 152; am. 1992, ch. 73, § 1, p. 208; am. 1998, ch. 118,

§ 15, p. 435; am. 1998, ch. 177, § 5, p. 658; am. 2000, ch. 332, § 3, p. 1112; am. 2013, ch. 252, § 1, p. 622.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 252, added subsections (23) and (24).

to S.L. 1977, ch. 199, which is codified as §§ 54-1801 to 54-1806, 54-1807, 54-1808, and 54-1810 to 54-1814.

Compiler's Notes.

The term "this act" in subsection (2) refers

JUDICIAL DECISIONS**Standard of Care.**

While this section identifies the grounds for which a physician may be disciplined, it does not establish a statewide standard of health

care practice. *Hall v. Rocky Mt. Emergency Physicians, LLC*, — Idaho —, 312 P.3d 313 (2013).

RESEARCH REFERENCES

A.L.R. — Pretrial discovery in disciplinary proceedings against physician. 65 A.L.R.6th 295.

CHAPTER 19

PUBLIC WORKS CONTRACTORS

SECTION.

54-1908. Meetings — Quorum.

54-1908. Meetings — Quorum. — The board shall hold not less than four (4) regular meetings each year, on a day not later than the fifteenth day of the month in each of the months of January, April, July and October, for the purpose of transacting such business as may properly come before it. At the April meeting of each year the board shall elect officers. Special or regular monthly meetings of the board may be held at such times as the board may provide in the rules. Four (4) members of the board shall constitute a quorum. Two (2) members of the board may call a special meeting at any time. Due notice of each meeting of the board and the time and place thereof shall be given each member in the manner prescribed in the rules. Each member of the board shall be compensated as provided by section 59-509(n), Idaho Code, and paid from the public works contractors license board fund.

History.

1941, ch. 115, § 8, p. 212; am. 1955, ch. 223, § 5, p. 480; am. 1969, ch. 18, § 2, p. 30; am. 1980, ch. 247, § 66, p. 582; am. 1987, ch. 55,

§ 1, p. 91; am. 1998, ch. 410, § 3, p. 1267; am. 1999, ch. 201, § 11, p. 529; am. 2012, ch. 36, § 2, p. 107; am. 2013, ch. 187, § 9, p. 447.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 187, substi-

tuted “fund” for “account” at the end of the section.

54-1926. Performance and payment bonds required of contractors for public buildings and public works of the state, political subdivisions and other public instrumentalities — Requirements for bonds — Governmental obligations.

JUDICIAL DECISIONS**Application.**

The city was not required to pay a contractor the entirety of the contract price minus five percent of the cloth filters' value where the city's withholding was less than five per-

cent of the overall contract price and did not represent retainage for accepted work. *Peck Ormsby Constr. Co. v. City of Rigby*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 157988 (D. Idaho Oct. 22, 2012).

CHAPTER 20**IDAHO REAL ESTATE LICENSE LAW****SECTION.**

54-2004. Definitions.

54-2018. License renewals — Inactive license status — Personal changes — Effective dates — Fees nonrefundable.

54-2022. Real estate education — Prelicense requirements.

54-2023. Continuing education requirements.

SECTION.

54-2025. Certification requirements.

54-2026. Certification of course providers.

54-2028. Term of provider certification and renewal.

54-2059. Disciplinary powers — Revocation, suspension or other disciplinary action.

54-2002. Licensure required.**JUDICIAL DECISIONS****Sales Agents.**

Although brokers are ultimately responsible for the contents of seller representation agreements, sales agents who enter into such

agreements on behalf of a broker are also accountable. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

54-2004. Definitions. — As used in this chapter:

(1) "Accredited college or university" means an institution accredited by the regional accrediting associations, as reported in the most current publication of the accredited institutions of postsecondary education.

(2) "Acting in this state" means and includes dealing with any interest in real property, or a business opportunity involving an interest in real property, that is situated in the state of Idaho, or conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

(3) "Active license" means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(4) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (36) of this section.

(5) "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(6) "Broker price opinion" means a written price opinion of the estimated price for identified real property prepared or rendered by an actively licensed broker or associate broker, for a purpose other than a prospective listing or sale, and that complies or purports to comply with the requirements and content provision of section 54-4105, Idaho Code.

(7) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(8) "Brokerage representation agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(9) "Business conduct and office operations course" means the component of the advanced real estate course that is required in order to obtain a broker license and that teaches business practices and office operations of the brokerage, including recordkeeping, trust account procedures and the laws governing those practices.

(10) "Business day" means and includes each day of the week except Saturday, Sunday or any other legal holiday enumerated in section 73-108, Idaho Code.

(11) "Business name" means the name in which the brokerage company is licensed by the commission.

(12) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(13) "Commission" means the Idaho real estate commission, unless the context clearly indicates a different meaning.

(14) "Commission core course" means the annual course covering the twelve (12) month period between July 1 and June 30, which contains curriculum identified by the commission that stresses that year's trends in real estate practices and changes in laws in real estate related industries. A core course must contain no more than four (4) classroom hours of instruction.

(15) "Continuing education elective course" means a real estate course offering, other than the commission core course for which continuing education credit hours may be obtained as provided in section 54-2023, Idaho Code.

(16) "Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

(17) "Cooperative sale" means a transaction involving two (2) or more brokers.

(18) "Council" means the Idaho real estate education council.

(19) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

(20) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(21) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are separated by both distance and time.

(22) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sales price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

(23) "Executive director" means the executive director of the Idaho real estate commission.

(24) "Expired license" means the status of a license when the license period has expired and the license is not renewed or provisional license granted, and before the license is terminated.

(25) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

(26) "Inactive license" means the status of a license that is not expired, terminated, suspended or revoked, and during which inactive period the license holder is not authorized to act as or associate with a designated broker.

(27) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(28) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(29) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(30) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility, or, if separated by distance, the instructor and student are connected by contemporaneous, two-way audio and visual communication.

(31) "Main office" means the principal location where the real estate broker is licensed to transact business.

(32) "Person" means and includes an individual, or any legal business entity.

(33) "Post license course" means a commission-approved or certified elective course that is specifically oriented toward salespersons in their first two (2) years of Idaho practice. The course must contain no more than twelve (12) classroom hours of instruction.

(34) "Primary Idaho license" means an Idaho real estate license that is not contingent upon continuance of a license in another state or jurisdiction.

(35) "Provisional license" means an extension of the period of active licensure, beyond the licensee's expiration date, granted by the commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for any other purpose allowed by this chapter.

(36) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others;

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

- (c) Any person who represents to the public that the person is engaged in any of the above activities;
- (d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;
- (e) A dealer in options as defined in this section.

(37) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (36) of this section.

(38) "Real estate settlement procedures act" means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 2008.

[(39)](38) "Regular employee" means an individual who performs a service for wages or other compensation and whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied.

[(40)](39) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

[(41)](40) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

[(42)](41) "Revoked license" means a license that has been permanently revoked by the issuing authority.

[(43)](42) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

[(44)](43) "State or jurisdiction" means and includes any state or territory of the United States, the District of Columbia and any foreign country that issues real estate licenses substantially similar to those provided for in this chapter.

[(45)](44) "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved final examination.

[(46)](45) "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

[(47)](46) "Suspended license" means a license that has been temporarily suspended by the issuing authority.

History.

I.C., § 54-2004, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 1, p. 417; am. 2002, ch. 220, § 1, p. 605; am. 2002, ch. 280, § 1, p. 817; am. 2003, ch. 16, § 14, p. 48; am. 2005, ch. 107, § 1, p. 334; am. 2006, ch. 166,

§ 1, p. 501; am. 2007, ch. 98, § 1, p. 283; am. 2008, ch. 144, § 1, p. 425; am. 2011, ch. 108, § 1, p. 275; am. 2014, ch. 42, § 1, p. 98; am. 2014, ch. 67, § 1, p. 170.

STATUTORY NOTES

Amendments.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 42, updated the reference in subsection (4); deleted “in reference to a real estate course offering” following “means” in subsection (9); in subsection (14), substituted “the annual course covering the twelve (12) month period between July 1 and June 30, which contains” for “in reference to a real estate course offering, the course containing” and “that year’s” for “current”; inserted present subsection (33) and redesignated the subsequent subsections accordingly; substituted “state or territory of the United States, the District of Columbia and any foreign country that issues” for “of the fifty (50) states and any foreign jurisdiction that issue” in present subsection [(44)](43).

The 2014 amendment, by ch. 67, inserted present subsection [(39)](38), and redesignated the subsequent subsections accordingly; and, in present subsection [(44)](43), substituted “state or territory of the United States, the District of Columbia” for “of the fifty (50) states” and “country” for “jurisdiction”.

Compiler's Notes.

The accredited institutions of postsecondary education, referred to in subsection (1), is a guide to institutions of higher learning that are accredited by regional, faith-based, and private career accrediting organizations published by the American council on education. See <http://www.acenet.edu>.

The bracketed designations were added by the compiler to account for the multiple amendment of this section in 2014.

54-2018. License renewals — Inactive license status — Personal changes — Effective dates — Fees nonrefundable. — (1) Initial license period. Each new license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on the last day of the month of the birth date of the licensee. A salesperson licensed in this state who applies for and obtains a broker license shall retain the license renewal period and expiration date of his salesperson license. Corporations, partnerships, limited liability companies and other entities defined as “persons” in this chapter shall have established as the equivalent of a birth date, the birth date of its designated broker. Licensed branch offices shall have established as the equivalent of a birth date, the birth date of the designated broker for the branch office.

(2) License renewal. Each license shall be renewable for a period of two (2) years by timely submitting a completed application. Applications must be received at the commission office on or before 5 p.m., mountain time, of the expiration date.

(a) If renewing an active license, the application shall include:

- (i) Certification that the applicant has met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code;
- (ii) Certification that the applicant has met the mandatory errors and omissions insurance requirement for real estate licensees as set forth in section 54-2013, Idaho Code; and
- (iii) Payment of all renewal fees established by this chapter or by the commission.

(b) If renewing an inactive license, the application shall include payment of all renewal fees established by this chapter or by the commission by rule.

(3) Late renewal. If the licensee fails to submit a completed application for renewal or pay the renewal fee on or before the expiration date, the commission may accept a later application or payment of the fee, subject to such conditions as the commission may require including, but not limited to, the assessment of a late fee; provided that between the license expiration date and the date of renewal of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful for any licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions of real estate broker or real estate salesperson in section 54-2004, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not renewed within one (1) year of the expiration date shall be automatically terminated by the commission and may not be renewed.

(4) Active and inactive license status. A licensee who is a designated broker or associated with a designated broker shall hold an active license. A licensee who has paid all applicable fees, who is not associated with a designated broker and who holds a current license that is not revoked, suspended or terminated shall hold his license on inactive status. A licensee seeking to change from active license status to inactive license status shall have the broker submit a change of status application to the commission in the form and manner approved by the commission. During the period that his license is inactive, the licensee shall not engage in the business or act in the capacity of real estate broker, associate broker or salesperson. However, an inactive licensee may receive a referral fee for any referral made during the period his license was active. A licensee may activate an inactive license by meeting each of the following:

- (a) If activating as a sales associate, associating with a designated Idaho broker and having the broker submit an application in the form and manner approved by the commission;
- (b) If activating as a designated broker, establishing an office in the manner required by this chapter and submitting an application in the form and manner approved by the commission;
- (c) Paying any required fees;
- (d) Obtaining and maintaining a policy of errors and omissions insurance as required by section 54-2013, Idaho Code, and in accordance with the rules of the commission and certifying the same; and
- (e) Successfully completing any continuing education requirements, as prescribed in section 54-2023, Idaho Code, and certifying the same for the current license period.

(5) Continuing education. A licensee shall not submit an application to renew a license on active status or to activate an inactive license without having obtained the continuing education credit hours required by section 54-2023, Idaho Code. A licensee who violates this subsection (5) shall be subject to disciplinary action by the commission.

(6) Time required. The commission may request satisfactory proof of continuing education compliance from any licensee who has certified to the commission that he has completed the requirement. The request shall state the time within which the proof must be received at the commission office, which time shall not be less than ten (10) business days.

(7) Satisfactory proof. Upon request from the commission, the licensee shall submit satisfactory proof of having met the continuing education requirement set forth in section 54-2023, Idaho Code. "Satisfactory proof" shall, for each course, consist of documentation:

(a) Identifying the licensee, the title of the course or challenge exam, the course certification number, the course provider, the number of classroom hours, the completion date of the course or challenge exam, and including:

(i) A transcript of the course taken;

(ii) A letter from the provider verifying successful completion of the course; or

(iii) A course completion certificate; and

(b) Identifying the course certification approval number to establish that the course is approved for continuing education credit as provided by section 54-2023, Idaho Code. The commission may, in its sole discretion, accept alternative documentation establishing that the course is approved for credit.

(8) Failure to submit proof. A licensee failing to submit satisfactory proof of completing the continuing education requirement after being requested to do so by the commission may have his license inactivated by the commission and shall not be entitled to reactivate the license unless and until he provides to the commission satisfactory proof that he meets the continuing education requirements of section 54-2023, Idaho Code. Nothing in this section shall limit the ability of the commission to investigate or discipline a licensee for violating subsection (5) of this section or for violating any other section of this chapter.

(9) Change in personal information. An individual licensee, whether active or inactive, shall provide written notice to the commission, in the form and manner approved by the commission, of any change of his personal name, address of personal residence or personal telephone number. Notice shall be provided within ten (10) business days of the change. If the licensee has changed his personal name, he shall also submit legal proof of the change and, if an active licensee, he shall have the broker submit the written notice of change to the commission.

(10) Issuance of the license and effective date. A real estate license shall be deemed issued, and any requested license changes shall become effective, when the completed application, attachments, and any required fees are received at and approved by the commission. An application that is incomplete or lacking the required fees shall be returned to the applicant and no license shall be issued until a completed application and all required fees are received at and actually approved by the commission. A brokerage is not required to obtain, display or possess a physical license certificate as evidence of the individual's active licensure; however, the commission may make license certificates available for a fee as authorized by this chapter. A brokerage shall not display or otherwise make available to the public a license certificate for any individual who does not hold an active license with the brokerage.

(11) Fees nonrefundable. No licensee shall be entitled to a refund of any fee after the license or license change has become effective.

History.

I.C., § 54-2018, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 6, p. 417; am. 2002, ch. 220, § 6, p. 605; am. 2003, ch. 65, § 3, p. 211; am. 2004, ch. 120, § 1, p. 403; am. 2005, ch. 107, § 4, p. 334; am. 2006, ch. 166, § 4, p. 501; am. 2007, ch. 98, § 3, p. 283; am. 2010, ch. 217, § 2, p. 485; am. 2014, ch. 67, § 2, p. 170.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 67, inserted “mountain standard time” in the introductory

paragraph in subsection (2) and substituted “ten (10) business days” for “ten (10) days” in the second sentence of subsection (9).

54-2022. Real estate education — Prelicense requirements. —

(1) Except as provided in section 54-2015, Idaho Code, an applicant seeking a primary Idaho license as a real estate salesperson, broker or associate broker shall furnish satisfactory proof to the commission that the applicant has successfully completed current commission-approved and accredited courses of real estate study as follows:

- (a) Salesperson’s license. For a salesperson’s license, the applicant shall complete a total of ninety (90) classroom hours;
- (b) Broker’s or associate broker’s license. Applicants seeking a broker’s or associate broker’s license shall, in addition to meeting the requirements for a salesperson’s license, successfully complete four (4) specified courses in advanced real estate study, for a minimum of ninety (90) additional classroom hours.

(2) Each applicant shall successfully complete all prelicense real estate courses within no more than three (3) years prior to the date of the license application. However, upon written request for special consideration by the license applicant, the commission may waive or modify the three-year requirement at its discretion, based on the applicant’s experience or additional education. Each waiver request shall be submitted with a current certified license history from Idaho or the applicant’s other licensing jurisdiction, which history shall indicate all disciplinary actions taken against the applicant’s license and the status and standing of such license in such licensing state or jurisdiction, along with sufficient proof of education completion.

(3) To receive credit for prelicense real estate courses, a student must regularly attend and complete the course, and such course must meet all requirements set forth in section 54-2036, Idaho Code.

(4) No credit will be given for courses taken for audit.

(5) Credit for completion of approved prelicense education coursework will not be granted when the content of a course repeats that for which credit has been previously received.

(6) Upon written request from a license applicant, the commission may waive or modify one (1) or more prelicense course requirements based upon the applicant’s satisfactory completion of similar real estate courses in Idaho or another state or jurisdiction. The request for waiver shall be accompanied by an official transcript from the institution that provided the course of instruction, along with a description of the subjects covered in the course and the number of classroom hours involved in the instruction.

“Satisfactory completion” means the applicant regularly attended the course and received a final grade of “C” or better.

History.

I.C. § 54-2022, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 9, p. 417; am.

2008, ch. 142, § 2, p. 409; am. 2014, ch. 42, § 2, p. 98.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 42, deleted “or the equivalent in available correspondence hours” at the end of paragraphs (1)(a) and (1)(b).

54-2023. Continuing education requirements. — (1) Each licensee applying to renew an Idaho broker or salesperson license on active status, and each Idaho broker or salesperson applying to change from inactive to active license status after having renewed the license on inactive status, shall successfully complete two (2) commission core courses, plus twelve (12) classroom hours of continuing education credit. If the inactive licensee is within the initial licensing period, no continuing education is required to change to active license status. Provided that:

(a) Salesperson — First active renewal or activation. To renew an Idaho salesperson license on active status for the first time, or to change from inactive to active status for the first time after the expiration of the initial license period, a salesperson shall complete two (2) commission core courses, plus the post license course.

(b) Inactive broker activating as a designated broker or branch manager. To activate as a designated broker or branch manager, a broker on inactive status shall, in addition to meeting the continuing education requirements of this subsection, have completed a commission-approved business conduct and office operations course within three (3) years immediately prior to the license activation.

(2) Credits used to reactivate license. Continuing education credit hours applied to activate an inactive license are considered “spent” and may not thereafter be applied toward the continuing education requirements for subsequent license renewal.

(3) No duplicate credit. No licensee may obtain continuing education credit for completing:

(a) Any core course curriculum for which the licensee has previously received continuing education credit; or

(b) Any course curriculum for which the licensee has received continuing education credit in the same license period.

(4) Excess credits. The classroom hours shall apply to the license period in which such course is completed; hours completed in excess of those required for the license period shall not accumulate or be credited for the purposes of subsequent license renewal periods.

(5) Commission-ordered education. No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action.

(6) Obtaining continuing education classroom hours. In order to obtain continuing education classroom hours, a licensee must:

- (a) Successfully complete a commission-approved continuing education or post license course;
- (b) Attend a regularly scheduled meeting of the commission from the time the meeting is called to order until the meeting is adjourned or until the licensee is excused by the commission chairperson. A maximum of four (4) hours for this activity shall be credited for any one (1) meeting in any one (1) license period;
- (c) Successfully complete a commission-approved broker prelicense course. Continuing education credit may be obtained for retaking the same broker prelicense course only if completed after three (3) years of completing the previous course; or
- (d) Provide to the commission a transcript or course completion certificate of successful completion of any of the following courses without commission preapproval of the curriculum, instructors or providers:
 - (i) Professional designation courses. Any course developed by national professional organizations that is required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice;
 - (ii) Courses accredited by another profession or jurisdiction. Any course approved by and offered in satisfaction of another professional or occupational licensing authority's education requirements, if the commission determines that the course is within the approved topic areas established by the commission and if the course otherwise meets commission standards for course certification including distance learning and minimum classroom hour requirements; or
 - (iii) Courses offered by an accredited college or university. Any course offered in satisfaction of a degree requirement by an accredited college or university if the commission determines that the course is within the approved topic areas established by the commission.
- (e) If a certified course instructor, teach a live course for which continuing education credit may be obtained. Credits shall be granted for the number of classroom hours taught.

(7) Licensee duty to keep satisfactory proof. The licensee shall keep satisfactory proof of having completed the continuing education requirement and shall submit such proof at the request of the commission as provided in section 54-2018, Idaho Code.

(8) Provisional license — Extension of time. A three (3) month extension of time for completing the education requirements may be obtained by submitting with the renewal application, or application to activate, satisfactory evidence showing that the applicant was unable to comply with such education requirements. Such evidence shall be:

- (a) Bona fide hardship preventing completion of the reinstatement requirements of an inactive license;
- (b) Health reasons preventing attendance or completion; or
- (c) Other compelling cause beyond the control of the applicant while engaged in the real estate business.

If such an extension is granted, the licensee shall receive a provisional license for a period of time not to exceed three (3) months. No further

extension of time may be granted. A license issued or renewed after an extension of time has been granted shall retain the original license expiration date. Failure to satisfy the continuing education requirement within the time granted shall result in the automatic inactivation of the license.

History.

I.C. § 54-2023, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 10, p. 417; am. 2002, ch. 280, § 2, p. 817; am. 2003, ch. 65, § 4, p. 211; am. 2004, ch. 120, § 2, p. 403;

am. 2005, ch. 107, § 6, p. 334; am. 2006, ch. 166, § 5, p. 501; am. 2007, ch. 98, § 5, p. 283; am. 2008, ch. 142, § 3, p. 410; am. 2010, ch. 217, § 3, p. 485; am. 2012, ch. 75, § 1, p. 217; am. 2014, ch. 42, § 3, p. 98.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 42, designated the former introductory language as present subsection (1), and redesignated the subsequent subsections accordingly; rewrote present subsection (1) to the extent that a detailed comparison is impracticable; substituted “the licensee” for “he” in present paragraphs (3)(a) and (3)(b); deleted subsection (6)(b) which

read: “Successfully complete a commission-approved continuing education challenge exam”; in paragraph (6)(c), deleted “or a commission-approved continuing education challenge exam, in advanced real estate study” at the end of the first sentence, and “or challenge exam” following “course” twice in the second sentence.

54-2025. Certification requirements. — (1) Certification required. Except as otherwise provided in section 54-2023(6)(d), Idaho Code, certification must be obtained by all course providers, instructors teaching any course other than a continuing education elective course, and for all course content in order for the course to be credited toward prelicense or continuing education requirements in Idaho under this chapter.

(2) Courses, instructors and providers monitored. The commission or its representative may monitor any course for the purpose of course, instructor or provider certification.

(3) If the commission at any time determines that an instructor, course or provider is not meeting the requirements for continued commission approval or certification, written notification detailing the deficiencies requiring correction shall be made immediately to the appropriate person. The commission shall take no action to withdraw the certification for thirty (30) days from the date of the written notice. At the expiration of this period, if the deficiencies have not been corrected to the commission’s satisfaction, the commission may take action to withdraw certification. Withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and the rules of the commission.

History.

I.C. § 54-2025, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 11, p. 417;

am. 2005, ch. 107, § 7, p. 334; am. 2014, ch. 42, § 4, p. 98.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 42, updated a

reference in subsection (1) in light of the 2014 amendment of § 54-2023.

54-2026. Certification of course providers. — (1) Degree-granting institutions. Degree-granting, accredited colleges and universities in any state or jurisdiction shall be deemed to be approved course providers in Idaho. However, course content must still be approved for the real estate education course to receive credit toward prelicense or continuing education licensing requirements in Idaho.

(2) Other course providers. All other course providers desiring to offer real estate courses for credit toward Idaho prelicense or continuing education requirements must first meet the following qualifications and receive certification. Each applicant seeking certification as a course provider shall comply with the following:

(a) File an application for certification in the form and manner required by the commission, along with proper fees, at least two (2) months prior to contemplated date of opening or first accredited course offering;

(b) Designate a “director” or “individual in charge,” who shall be responsible for the course provider’s operation and its real estate courses, and with whom the commission may communicate. Unless this requirement is waived upon special review of the commission in the manner stated below, the individual in charge shall:

(i) Not have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction;

(ii) Not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of any felony or a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing in a court of proper jurisdiction; and

(iii) Have attended a commission-approved provider training within the two (2) years immediately preceding the designation.

The failure of the provider to have in place a designated individual meeting the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the provider’s certificate as provided in section 54-2025(3), Idaho Code;

(c) File a properly executed “irrevocable consent to service of process” in the manner and form prescribed by the commission and in substantial accordance with section 54-2012(1)(k), Idaho Code. The commission, in its discretion, may make such additional investigation and inquiry relative to the applicant for provider certification as it deems advisable and, if good cause exists, may deny or accept the application for certification.

History.

I.C., § 54-2026, as added by 2000, ch. 285, § 3, p. 908; am. 2003, ch. 66, § 4, p. 220; am.

2004, ch. 120, § 3, p. 403; am. 2010, ch. 212,

§ 3, p. 456; am. 2014, ch. 42, § 5, p. 98.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 42, in paragraph (2)(b), divided the existing provisions

into the first two paragraphs and inserted designations, substituted “shall” for “must” at the end of the introductory language, deleted

"The designated individual in charge must" at the beginning of paragraph (ii), and added paragraph (iii).

54-2028. Term of provider certification and renewal. — (1) Each course provider's certification issued by the commission shall be for a term of two (2) years. The exact expiration date will be shown on the provider certificate.

(2) In order to maintain certification, each provider shall:

(a) Return a properly completed renewal application on a form provided by the commission, along with all necessary attachments and renewal fees to the commission office prior to the expiration date for commission approval; and

(b) Certify that its designated director or person in charge has, within the past two (2) years, attended a commission-approved provider training.

(3) Recertification is not effective until the commission has formally approved the application for renewal.

(4) Failure to obtain approved renewal of certification prior to its expiration date will result in no credit being given for courses not yet successfully completed by the expiration date.

History.

I.C., § 54-2028, as added by 2000, ch. 285, § 3, p. 908; am. 2014, ch. 42, § 6, p. 98.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 42, designated the beginning language as present subsection (1) and redesignated the rest of the section;

and, in subsection (2), substituted "shall" for "must" at the end of the introductory language and added paragraph (b).

54-2038. Designated broker — General responsibilities — Broker price opinions.

JUDICIAL DECISIONS

ANALYSIS

Broker activities.
Harm not required.
Sales agents.

Broker Activities.

Where defendant, without a broker's license, continued to carry on the business of real estate firm after the death of its owner/broker by entering into seller representation agreements, listing properties on the MLS for up-front marketing fees, showing the properties to prospective buyers, and attempting to sell properties for a separate broker's commission, defendant unlawfully carried on the business of the real estate firm and engaged in an unauthorized use of a broker's license.

Maclay v. Idaho Real Estate Comm'n, 154 Idaho 540, 300 P.3d 616 (2012).

Harm Not Required.

None of the real estate licensing statutes require harm to the public as an element of a violation: they simply provide that violators are subject to discipline. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

Sales Agents.

Although brokers are ultimately responsi-

ble for the contents of seller representation agreements, sales agents who enter into such agreements on behalf of a broker are also

accountable. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

54-2040. Main office or business location.

JUDICIAL DECISIONS

Broker's License Required.

Where defendant, without a broker's license, continued to carry on the business of real estate firm after the death of its owner/broker by entering into seller representation agreements, listing properties on the MLS for up-front marketing fees, showing the proper-

ties to prospective buyers, and attempting to sell properties for a separate broker's commission, defendant unlawfully carried on the business of the real estate firm and engaged in an unauthorized use of a broker's license. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

54-2050. Brokerage representation agreements — Required elements.

JUDICIAL DECISIONS

Harm Not Required.

None of the real estate licensing statutes require harm of the public as an element of a violation: they simply provide that violators

are subject to discipline. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

54-2053. Advertising.

JUDICIAL DECISIONS

Violations.

Defendant violated subsection (1) when he used a new business name prior to approval by the commission, listed properties without listing a licensed broker's name, and misled

the public by including one real estate firm's listings on the website of a second firm. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

54-2054. Compensation, commissions and fees — Prohibited conduct.

JUDICIAL DECISIONS

Fees.

Where defendant accepted compensation for entering into seller representation agreements, advertising properties, listing properties, showing properties to prospective buyers, and placing signs on real property for flat

fees, there is substantial evidence that he accepted fees not paid through a brokerage for activities requiring a broker's license in violation of subsection (9). *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

54-2057. Death or incapacity of a designated broker.

JUDICIAL DECISIONS

Unlawful Continuance.

Where defendant, without a broker's license, continued to carry on the business of real estate firm after the death of its owner/broker by entering into seller representation

agreements, listing properties on the MLS for up-front marketing fees, showing the properties to prospective buyers, and attempting to sell properties for a separate broker's commission, defendant unlawfully carried on the

business of the real estate firm and engaged in an unauthorized use of a broker's license. Maclay v. Idaho Real Estate Comm'n, 154 Idaho 540, 300 P.3d 616 (2012).

54-2059. Disciplinary powers — Revocation, suspension or other disciplinary action. — (1) The commission may temporarily suspend or permanently revoke licenses issued under the provisions of this chapter, issue a formal reprimand and impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000), and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any licensee who is found to have violated any section of the Idaho Code, the commission's administrative rules or any order of the commission. The executive director may issue informal letters of reprimand to licensees without civil penalty or cost assessment.

The commission may impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any person who is found, through a court or administrative proceeding, to have acted without a license in violation of section 54-2002, Idaho Code. The civil penalty provisions of this section are in addition to and not in lieu of any other actions or criminal penalties for acting as a broker or salesperson without a license which might be imposed by other sections of this chapter or Idaho law.

The commission may also accept, on such conditions as it may prescribe, or reject any offer to voluntarily terminate the license of a person whose activity is under investigation or against whom a formal complaint has been filed.

(2) If the commission suspends or revokes a license, or imposes a civil penalty, or assesses costs and attorney's fees, the commission may withhold execution of the suspension, revocation or civil penalty, or costs and attorney's fees on such terms and for such time as it may prescribe.

(3) If any amounts assessed against a defendant by final order of the commission become otherwise uncollectible or payment is in default, and only if all the defendant's rights to appeal have passed, the commission may then proceed to district court and seek to enforce collection through judgment and execution.

(4) All civil penalties, costs, and attorney's fees collected by the commission under this chapter shall be deposited in the state treasury to the credit of the special real estate fund established by section 54-2021, Idaho Code. Any amounts of civil penalties so collected, deposited and credited shall be expended for exclusive use in developing and delivering Idaho real estate education.

History.

I.C., § 54-2059, as added by 2000, ch. 285, § 3, p. 908; am. 2004, ch. 121, § 1, p. 409; am.

2014, ch. 42, § 7, p. 98.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 42, in subsec-

tion (4), inserted "Idaho" and deleted "to benefit Idaho real estate licensees" from the end

of the last sentence.

54-2060. Grounds for disciplinary action.

JUDICIAL DECISIONS

ANALYSIS

Misconduct.

Unlicensed broker.

Misconduct.

Defendant's conduct with regard to his continued use of a real estate brokerage after its license was terminated and his continued use of that firm's website support the commission's finding that he acted dishonorably or dishonestly and engaged in continued or flagrant misrepresentation. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

Unlicensed Broker.

Broker's preparation of the seller representation agreements while unlicensed, creation of incomplete seller representation agreements, and listing of another agent's properties while unlicensed all established gross negligence or reckless conduct. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 300 P.3d 616 (2012).

CHAPTER 21

VETERINARIANS

SECTION.

54-2103. Definitions.

54-2103. Definitions. — As used in this chapter:

(1) "Accredited continuing education activity" means a provider and course, seminar, scientific program or any other activity approved by the board or its designees for continuing education credit.

(2) "Accredited or approved school of veterinary medicine" means any veterinary college or division of a university or college inside or outside the United States or Canada that offers the degree of doctor of veterinary medicine, veterinary medicine doctor, or its equivalent and is accredited or approved by the council on education of the American veterinary medical association or other accrediting agency or association approved by the board.

(3) "Allied health professional" means a person holding a current active license, in good standing, in any state to practice one (1) of the healing arts including, but not limited to, medicine, dentistry, osteopathy, chiropractic, acupuncture and podiatry.

(4) "Anesthetized" means any condition of general anesthesia, caused by the administration of a drug or combination of drugs in sufficient quantity to produce a state of unconsciousness or disassociation and blocked response to a given pain or alarm stimulus.

(5) "Animal" means any animal other than man and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.

(6) "Assistant" means any individual, other than a certified veterinary technician or a licensed veterinarian, who is utilized by a licensed veteri-

narian to assist in the performance of acts pertaining to the practice of veterinary medicine.

(7) "Board" means the state board of veterinary medicine.

(8) "Certified euthanasia agency" or "CEA" means a law enforcement agency, an animal control agency or a society for the prevention of cruelty to animals, which has been inspected and certified by the euthanasia task force or the board.

(9) "Certified euthanasia technician" or "CET" means a person employed by a certified euthanasia agency[,] who is instructed and certified by the euthanasia task force or the board as defined in the rules of the board, but not to include an individual employed as a technician by animal research laboratories.

(10) "Certified veterinary technician" means a person who has fulfilled the certification requirements prescribed by board rule and has been certified by the board to practice veterinary technology in this state.

(11) "Consultation" means a deliberation between two (2) or more veterinarians concerning the diagnosis of a disease or the proper management of the case.

(12) "Credit hour" means fifty (50) minutes of participation in an accredited continuing education activity.

(13) "Dentistry" is the practice of veterinary medicine and means the application or use of any instrument or device to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury, disease or other condition of an animal's tooth, gum or related tissue. Dentistry includes, but is not limited to:

(a) "Preventive dental procedures" including, but not limited to, the removal of calculus, soft deposits, plaque, stains, and floating to shape the teeth above the gum line or the smoothing, filing or polishing of tooth surfaces above the gum line; and

(b) "Operative dentistry/oral surgery" or any other dental procedure that invades the hard or soft oral tissue including a procedure that alters the structure of one (1) or more teeth, or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth.

(14) "Direct supervision" means the supervising veterinarian is on the premises where the animal is being treated, is quickly and easily available and the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires.

(15) "Discipline" means board action including, but not limited to:

(a) Refusing to issue, renew or reinstate a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;

(b) Denial, revocation, suspension, sanction, probation or voluntary surrender of a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;

(c) The ability to enter into consent agreements and negotiated settlements with licensed veterinarians, certified veterinary technicians, certified euthanasia agencies and certified euthanasia technicians;

(d) The ability to bring an administrative or civil action against any person in or outside of this state who practices veterinary medicine, veterinary technology or who performs euthanasia within this state.

(16) "Emergency" means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

(17) "Emergency veterinary facility" means any facility with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation or that displays to the public any sign, card, or advertisement that indicates it is an emergency veterinary clinic or hospital. An emergency veterinary facility may be an independent after-hours service, an independent twenty-four (24) hour service, or it may be part of a full-service veterinary medical facility.

(18) "Euthanasia task force" means a task force established by the board for the purposes of training, examining, certifying and inspecting certified euthanasia agencies and certified euthanasia technicians.

(19) "Extra label use" means the actual or intended use of a human or veterinary drug in an animal in a manner that is not in accordance with the drug's labeling.

(20) "Floating" means shaping the posterior (cheek) teeth and the incisors (cutting teeth) in horses, mules and donkeys through the use of hand floats, rasps, burs, mechanical files or other file-like instruments to restore balance, allow more efficient mastication, and reduce pain and trauma to the periodontal tissues.

(21) "Herd, litter or flock" of animals means animals managed as a group for purposes including, but not limited to, breeding, sale, show or food production.

(22) "Immediate supervision" means the supervising veterinarian is in the immediate area, in audible and visual range of the animal patient and the person treating the patient and the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires.

(23) "In good standing" means, when used in reference to an applicant for licensure or certification, that an applicant:

(a) Has not been the recipient of any administrative penalties regarding his practice of veterinary medicine including, but not limited to, fines, formal reprimands, license suspensions or revocations (except for license revocations for nonpayment of license renewal fees) or probationary limitations, or has not entered into any consent agreement or negotiated settlement that contains conditions placed by a board on his professional conduct and practice, including any voluntary surrender of a license; and

(b) Has never had his United States drug enforcement administration privileges restricted or revoked; and

- (e) Has not been convicted of a felony as defined in chapter 1, title 18, Idaho Code; and
- (f) Has no criminal conviction record or pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of veterinary medicine. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the board in sufficient detail to enable the board to make a determination whether the record or charge is substantially related to the practice of veterinary medicine.

(24) "Indirect supervision" means the supervising veterinarian is not on the premises but is available for immediate contact by telephone, radio or other means, has given either written or oral instructions for treatment of the animal patient, the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires, and the animal, if previously anesthetized, has recovered to the point of being conscious and sternal.

(25) "Legend/Prescription drug" means any drug which, under federal law, regulation or rule, is required, prior to being distributed or delivered, to be labeled with one (1) of the following statements: "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian," or "Caution: Federal law prohibits dispensing without a prescription," or "RX Only," or a drug which is required by any applicable state or federal law, rule or regulation to be distributed or dispensed pursuant to a prescription only, or is restricted to use by licensed practitioners only.

(26) "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state.

(27) "Malpractice" means, but is not limited to:

- (a) Treatment in a manner contrary to accepted veterinary practices and with injurious results; or
- (b) Any professional misconduct or unreasonable lack of professional skill or fidelity in the performance of the professional practice of veterinary medicine; or
- (c) Failure to provide adequate supervision, except in an emergency situation; or
- (d) Allowing an unqualified individual to perform a procedure that is part of the practice of veterinary medicine; or
- (e) The negligent practice of veterinary medicine, as determined by the standard of practice for the area, that results in injury, unnecessary suffering or death.

(28) "Medical incompetence" means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients.

(29) "Mobile clinic" means a vehicle including, but not limited to, a camper, motor home, trailer or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(30) "On-call emergency service" means a veterinary medical facility that is available to provide emergency veterinary services as requested if a veterinarian is available.

(31) "Owner/Ownership" means ownership as defined by the laws of property and ownership, chapter 1, title 55, Idaho Code, and chapter 1, title 73, Idaho Code.

(32) "Person" means any individual, firm, partnership, association, joint venture, cooperative and corporation, or any other group or combination acting in concert; and whether or not acting as principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.

(33) "Physical or mental incompetence" means the veterinarian's ability to practice veterinary medicine with reasonable skill and safety is impaired by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals or any other substance, or as a result of any mental or physical disability.

(34) "Practice of veterinary medicine" in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine and means:

(a) To directly or indirectly diagnose, treat, correct, change, relieve or prevent animal disease, deformity, defect, injury or other physical or mental conditions; including the prescribing, dispensing, delivering or administering of any drug, medicine, biologic, apparatus application, anesthetic or other therapeutic or diagnostic substance or technique, or the use of any obstetrical procedure or any manual or mechanical procedure for artificial insemination, for testing or examining for pregnancy, fertility evaluation, embryo transplant, grading of fresh semen, or to render advice or recommendation with regard to any of the above.

(b) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subsection (34)(a) of this section.

(c) To use any title, words, abbreviations or letter in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subsection (34)(a) of this section, except where such person is a licensed veterinarian.

(35) "Professional supervision" means the supervising veterinarian is in daily contact by telephone, radio or other means with the temporary licensee.

(36) "Referral" means the transfer of responsibility for diagnosis and treatment from the referring veterinarian to the receiving veterinarian, or from the referring veterinarian to the board-certified specialist, or from the referring veterinarian to an allied health professional.

(37) "Regular employee" means a person who performs services for the animal's owner other than, or in addition to, feeding, boarding, castrating and dehorning, but does not include independent contractors or agents.

(38) "Supervision" means the action or process of a supervising veterinarian in directing activities or a course of action for those individuals to whom activities or functions have been assigned or delegated.

(39) "Supervising veterinarian" means a licensed veterinarian utilizing the services of a temporary licensee, certified veterinary technician, veterinary technician, veterinary technician with a temporary certification,

veterinary assistant, certified euthanasia technician, or as provided by rule. A supervising veterinarian shall be individually responsible and liable, regardless of the supervision provided, for all damages arising out of his own acts or omissions and for the performance of any acts and omissions pertaining to the practice of veterinary medicine that are delegated to the temporary licensee, certified veterinary technician, veterinary technician, veterinary assistant or certified euthanasia technician. Nothing herein shall be construed to deprive the board of its disciplinary authority with respect to the temporary licensees, certified veterinary technicians, veterinary technicians, veterinary assistants or certified euthanasia technicians.

(40) "Unethical or unprofessional conduct" means to knowingly engage in conduct of a character likely to deceive or defraud the public, false or misleading advertising or solicitation, obtaining any fee or compensation by fraud or misrepresentation, sharing office space and working in conjunction with any person illegally practicing veterinary medicine, employing either indirectly or directly an unlicensed or uncertified person to perform acts pertaining to the practice of veterinary medicine, except as provided by law or rule, or the violation of any law or rules adopted by the board pertaining to unethical or unprofessional conduct, or that provide a code of professional conduct to be followed and carried out by persons licensed or certified by the board.

(41) "Unlicensed practice" means:

- (a) The practice of veterinary medicine in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, without a valid, unexpired, unrevoked, and unsuspended active license or certification in this state to do so, except as provided by law or rule; or
- (b) Representing one's self through offerings, advertisements or use of professional titles or designations as being qualified to practice veterinary medicine.

(42) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from an accredited or approved school of veterinary medicine or as otherwise provided by law or rule.

(43) "Veterinarian on call" means a veterinarian is not present at the veterinary medical facility, but is able to respond within a reasonable time to requests for emergency veterinary services.

(44) "Veterinarian on premises" means a veterinarian is present at the veterinary medical facility and is prepared and qualified to render veterinary services.

(45) "Veterinary medical facility" means any premises, office, unit, structure, mobile unit, or area utilized for the practice of veterinary medicine other than the premises of an owner when used for treatment of the owner's animal.

(46) "Veterinary technician" means a person who has graduated from a veterinary technology program accredited or approved by the committee on veterinary technician education and activities of the American veterinary medical association, or other accrediting agency approved by the board, or a person who has received equivalent training as set forth in the rules of the board.

(47) "Veterinary technology" means the performance of services within the practice of veterinary medicine by a person working under the direction of a supervising veterinarian to perform duties that require an understanding of veterinary medicine in order to carry out the orders of the veterinarian. Veterinary technology does not include prognosis, diagnosis, operative dentistry, deliberate tooth extraction procedures or the prescribing of treatment or performing surgery of any kind.

History.

1971, ch. 173, § 3, p. 812; am. 1983, ch. 139, § 3, p. 336; am. 1990, ch. 111, § 2, p. 222; am. 1991, ch. 138, § 1, p. 325; am. 1995, ch. 62, § 1, p. 145; am. 2000, ch. 122, § 1, p. 269; am.

2001, ch. 149, § 1, p. 525; am. 2006, ch. 139, § 1, p. 395; am. 2007, ch. 54, § 1, p. 126; am. 2009, ch. 82, § 1, p. 229; am. 2010, ch. 105, § 1, p. 207; am. 2013, ch. 79, § 1, p. 194; am. 2013, ch. 290, § 1, p. 762.

STATUTORY NOTES**Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 79, deleted former subsection (9)(b) which read "Any person who is trained prior to December 31, 1992, in euthanasia methods, in a course approved by the board, may be certified upon presentation of evidence of such training to either the euthanasia task force or the board" and substituted "committee on veterinary technician education and activities" for "council on education" in subsection (46).

The 2013 amendment, by ch. 290, substi-

tuted "prescribing, dispensing, delivering or administering" for "prescription or administration" in paragraph (34)(a).

Compiler's Notes.

For more on the committee on veterinary technician education and activities of the American veterinary medical association, see <https://www.avma.org/About/Governance/Councils/Pages/Committee-on-Veterinary-Technician-Education-and-Activities-Entity-Description.aspx>.

The bracketed insertion in subsection (9) is a result of the reconciliation of the multiple 2013 amendments of this section.

CHAPTER 23
PSYCHOLOGISTS**SECTION.**

54-2305. Board of psychologist examiners — Powers.

54-2305. Board of psychologist examiners — Powers. — The board of psychologist examiners shall have the following powers:

(1) To pass upon the qualifications and fitness of applicants for licenses and reciprocal licenses; and, at its option to adopt and revise rules requiring applicants to pass examinations relating to their qualifications as a prerequisite to the issuance of licenses.

(2) To adopt, and, from time to time, revise such rules in accordance with the provisions of chapter 52, title 67, Idaho Code, and not inconsistent with the law as may be necessary to carry into effect the provisions of this chapter. Such rules shall include, but need not be limited to, a code of ethics for psychologists in the state consistent with the current, and as future amended, ethical standards for psychologists of the American psychological association and the educational and professional qualifications of applicants for licensing under this chapter.

(3) To examine for, deny, approve, issue, revoke, suspend and renew the

licenses of psychologists and psychologist applicants pursuant to this chapter, and to conduct hearings in connection therewith.

(4) To conduct hearings upon complaints concerning violations of the provisions of, and the rules adopted pursuant to, this chapter and cause the prosecution and enjoinder of all such violations.

(5) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records, and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in district courts in criminal cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated. It shall be the duty of any district court in this state, on application by the board, to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of the subpoena issued from such court for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

(6) Proceedings before the board and judicial review of the action of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(7) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

(8) To adopt a rule requiring continuing education as a condition of continued licensure.

(9) To adopt rules allowing for a temporary permit to individuals licensed as psychologists in another state authorizing such individuals to practice psychology in Idaho for a period not to exceed thirty (30) days pursuant to such terms and requirements as set forth in the rules.

(10) To establish by rule an inactive license status.

(11) To establish by rule the standards and requirements for the use of communication technology in the practice of psychology, including supervision.

History.

1963, ch. 186, § 5, p. 549; am. 1974, ch. 13, § 160, p. 138; am. 1984, ch. 141, § 2, p. 330; am. 1987, ch. 147, § 2, p. 292; am. 1993, ch. 216, § 80, p. 587; am. 2009, ch. 33, § 4, p. 90; am. 2013, ch. 13, § 1, p. 23.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 13, added subsection (11).

CHAPTER 24

DRINKING WATER AND WASTEWATER PROFESSIONALS LICENSING ACT

SECTION.

54-2407. Fees — Payment of costs and expenses.

SECTION.

54-2411. Annual renewal of license.

54-2407. Fees — Payment of costs and expenses. — (1) The bureau of occupational licenses shall collect a fee not to exceed one hundred dollars (\$100) for each application, each administration of an examination, each original license, and each annual renewal of any license issued pursuant to this chapter, and shall deposit all fees in the state treasury in accordance with section 67-2605, Idaho Code. The actual fees shall be set by board rule. The bureau shall also collect a fee not greater than that charged by the examination provider when an examination is required as a condition of licensure. All required fees shall not be prorated and are nonrefundable.

(2) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be charged against and paid from said fund [account].

History.

I.C., § 54-2407, as added by 2004, ch. 335, § 1, p. 995; am. 2013, ch. 180, § 1, p. 417.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 180, substituted “not greater than” for “equal to” in the next-to-last sentence in subsection (1).

were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 2 of S.L. 2013, ch. 180 declared an emergency. Approved March 29, 2013.

Compiler's Notes.

The bracketed insertions in subsection (2)

54-2411. Annual renewal of license. — Every person licensed under the provisions of this chapter shall annually pay the prescribed renewal fee and certify compliance with continuing education requirements and provide such other information as the board may request. Any license canceled for failure to meet the renewal requirements may be reinstated according to section 67-2614, Idaho Code.

History.

I.C., § 54-2411, as added by 2004, ch. 335, § 1, p. 995; am. 2005, ch. 87, § 1, p. 305; am.

2014, ch. 106, § 1, p. 313.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 106, deleted

the exception at the end of the section relating to reinstatement of a drinking water operator

license canceled for more than two years.

CHAPTER 25

HORSE RACING

SECTION.

54-2502. Definitions.

54-2505. Commission's annual report — Public record.

54-2512A. Pari-mutuel betting on historical horse races — Distributions of

SECTION.

deposits — Historical horse race purse moneys fund.

54-2513. Horse racing — Distributions of deposits — Breakage.

54-2502. Definitions. — Unless the context otherwise requires, words and phrases as used herein shall mean:

(1) "Commission" means the Idaho state racing commission, hereinafter created.

(2) "Gross daily receipts" means the total of all sums deposited in all pools for each race day.

(3) "Historical horse race" means a race involving live horses that was conducted in the past and that is rebroadcast by electronic means and shown on a delayed or replayed basis for the purposes of wagering conducted at a facility that is authorized to show simulcast and/or televised races.

(4) "Horsemen's group" means an organization composed of licensed owners and/or trainers duly registered with the secretary of state and recognized by the Idaho [state] racing commission.

(5) "Host facility" means the racetrack at which the race is run, or the facility which is designated as the host facility if the race is run in a jurisdiction which is not participating in the interstate combined wagering pool.

(6) "Host jurisdiction" means the jurisdiction in which the host facility is located.

(7) "Interstate common wagering pool" means a pari-mutuel pool established in one (1) jurisdiction which is combined with comparable pari-mutuel pools from one (1) or more racing jurisdictions. Such pool is established for the purpose of establishing pay-off prices in the various jurisdictions.

(8) "Pari-mutuel" means any system whereby wagers with respect to the outcome of a race are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under state law, and in which the participants are wagering with each other and not against the operator.

(9) "Persons" means and includes individuals, firms, corporations and associations.

(10) "Pool" means the total sum of all moneys wagered in each race for each type of bet. Types of bets include win, place, show, quinella, daily double, exacta, trifecta, etc., and such other types as are approved by the commission from time to time.

(11) "Race meet" means and includes any exhibition of thoroughbred, purebred, and/or registered horse racing, mule racing or dog racing, where

the pari-mutuel system of wagering is used. Singular includes the plural and plural includes the singular; and words importing one gender shall be regarded as including all other genders.

(12) "Racing jurisdiction" or "jurisdiction" means a governmental jurisdiction responsible for the regulation of pari-mutuel racing in that jurisdiction.

(13) "Simulcast" means the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location.

History.

1963, ch. 64, § 2, p. 246; am. 1969, ch. 221, § 1, p. 724; am. 1984, ch. 83, § 1, p. 158; am. 1985, ch. 194, § 1, p. 494; am. 1987, ch. 316, § 2, p. 660; am. 1988, ch. 141, § 1, p. 256; am.

1991, ch. 56, § 1, p. 106; am. 1992, ch. 19, § 1, p. 55; am. 1996, ch. 380, § 1, p. 1287; am. 1998, ch. 97, § 1, p. 345; am. 2006, ch. 147, § 1, p. 461; am. 2013, ch. 139, § 1, p. 333.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 139, added the definition for "historical horse race" and redesignated the following subsections accordingly.

Compiler's Notes.

The bracketed insertion in subsection (4) was added by the compiler to correct the name of the referenced agency.

54-2505. Commission's annual report — Public record. — The commission shall keep detailed records of all meetings and of the business transacted therein, and all licenses applied for and issued, reports of which shall be embodied in an annual report which the commission shall prepare and submit to the governor on or before the thirty-first day of March of each year. Said annual report shall cover the activities of the commission, including the financial report of the commission and a financial summary of licensees subject to section 54-2508, Idaho Code, and organizations of licensees defined in section 54-2502(4), Idaho Code, for the preceding year in addition to the aforementioned.

All records of the commission shall be public records, and as such, subject to public inspection.

History.

1963, ch. 64, § 5, p. 246; am. 1969, ch. 221,

§ 1, p. 724; am. 2005, ch. 264, § 1, p. 809; am.

2013, ch. 139, § 2, p. 333.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 139, updated

a statutory reference in the first paragraph in light of the 2013 amendment of § 54-2502.

54-2512A. Pari-mutuel betting on historical horse races — Distributions of deposits — Historical horse race purse moneys fund. —

(1) Wagering on an historical horse race is declared to be lawful and within the scope of a license that authorizes a live race meet licensee to conduct and supervise the use of the pari-mutuel wagering on simulcast and/or televised races. Wagering on an historical horse race shall be conducted in accordance

with the pari-mutuel system pursuant to the provisions of this chapter and in accordance with all rules promulgated by the commission. Wagering on an historical horse race may be conducted at any facility authorized to conduct and supervise wagering on simulcast and/or televised races.

(2) Each licensee conducting the pari-mutuel system for historical horse races shall distribute and pay all sums deposited in any historical horse race pool as follows:

(a) No less than eighty-nine percent (89%) of gross daily receipts in various wagering pools established to fund reserves and payoffs for distribution and payment to winning wagers;

(b) One and one-half percent (1.50%) of gross daily receipts to the Idaho state racing commission for distribution and deposit as follows in the following designated accounts:

(i) One-half of one percent (0.50%) of gross daily receipts to the racing commission account within the state regulatory fund;

(ii) One-fifth of one percent (0.20%) of gross daily receipts to the track distribution account within the pari-mutuel distribution fund;

(iii) One-fifth of one percent (0.20%) of gross daily receipts to the breed distribution account within the pari-mutuel distribution fund;

(iv) One-half of one percent (0.50%) of gross daily receipts to the public school income fund; and

(v) One-tenth of one percent (0.10%) of gross daily receipts to the Idaho horse council youth programs account which is hereby created within the pari-mutuel distribution fund; and

(c) The balance of gross daily receipts to the licensee. All moneys in these accounts are hereby continuously appropriated to the commission for further distribution and time of payment as provided in section 54-2513, Idaho Code.

(3) Each licensee conducting the pari-mutuel system for historical horse races shall enter into an agreement with a horsemen's group, as the term "horsemen's group" is defined in section 54-2502, Idaho Code, that shall address, but not be limited to, establishing the percentage of the historical horse race handle that is dedicated to the live horse race purse structure. In addition, the agreement shall provide that all historical race purse moneys that are accrued as required by horsemen's agreements shall be held in the historical horse race moneys fund created pursuant to the provisions of this section.

(4) The historical horse race purse moneys fund is hereby created in the state treasury. Moneys in the fund shall consist of all historical horse race moneys that are accrued as required by horsemen's agreements. Moneys in the fund are hereby perpetually appropriated to the Idaho state racing commission for distribution pursuant to the provisions of horsemen's agreements and rules of the commission. The commission is authorized to promulgate rules providing for the receipt, deposit, withdrawal and distribution of such moneys. The state treasurer shall invest idle moneys in the fund and any interest received on those investments shall be returned to the fund which is created pursuant to the provisions of this section.

(5) The commission may promulgate rules pursuant to chapter 52, title 67, Idaho Code, to implement the provisions of this section.

History.

I.C., § 54-2512A, as added by 2013, ch. 139,
§ 3, p. 333.

STATUTORY NOTES**Cross References.**

Breed distribution account, § 54-2513.
Pari-mutuel distribution fund, § 54-2513.
Public school income fund, § 33-903.

Racing commission account, § 54-2513.
State treasurer, § 67-1201 et seq.
Track distribution account, § 54-2513.

54-2513. Horse racing — Distributions of deposits — Breakage. —

(A) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle in excess of one hundred thousand dollars (\$100,000) shall distribute all sums deposited in any pool as follows:

- (1) Eighty-two percent (82%) of any win, place or show pool to the winner thereof, and eighteen percent (18%) to the licensee;
- (2) Seventy-seven and one-quarter percent (77.25%) of all two (2) horse exotic wagers including, but not limited to, daily doubles and quinellas to the winner thereof, three-quarters of one percent (.75%) to the [Idaho state] racing commission for deposit in the racing commission account, and twenty-two percent (22%) to the licensee;
- (3) Seventy-five and one-quarter percent (75.25%) of all three (3) or more horse exotic wagers including, but not limited to, trifecta and twin-trifecta to the winner thereof, three-quarters of one percent (.75%) to the [Idaho state] racing commission for deposit in the racing commission account, and twenty-four percent (24%) to the licensee.

(B) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle in excess of one hundred thousand dollars (\$100,000) shall retain the sums deposited in any pool as required in subsection (A) of this section, for distribution and payment based upon gross daily receipts as follows:

- (1) One and one-quarter percent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission, for deposit in the racing commission account, which is hereby created in the state regulatory fund.
- (2) One-half of one percent (.50%) of gross daily receipts from horse races, separately stated, shall be paid to the Idaho state racing commission for deposit in the track distribution account, which is hereby created in the pari-mutuel distribution fund, for further distribution to certain Idaho horse race tracks, defined as follows:

- a. Recipient horse racing tracks shall be those which, during the race meet year of distribution, have a total race handle from both live races and simulcast races of less than five million dollars (\$5,000,000);
- b. Distributions to recipient horse racing tracks shall be weighted proportionately on the number of days raced during the year of distribution.

All moneys in the track distribution account are hereby continuously appropriated to the commission for payment as required by this section.

Payments to horse racing tracks shall be made annually but not later than December 15.

(3) One-half of one percent (.50%) of gross daily receipts from horse races, separately stated shall be paid by the licensee to the commission for deposit in the breed distribution account, which is hereby created in the pari-mutuel distribution fund, for payment by the commission in proportion to the handle generated by each horse breed, to lawfully constituted representatives of each horse breed, to benefit owners and/or breeders of Idaho bred racing thoroughbreds, racing quarter horses, racing Appaloosas, racing paints and racing Arabians, subject to the approval of the commission. Moneys in the breed distribution account on December 31 of each year which have not been distributed by the commission shall be paid to the public school income fund.

All moneys in the breed distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to representatives shall be made quarterly.

(4) From the balance of gross daily receipts remaining with the licensee after the distributions required in subsection (B) (1), (2) and (3) of this section from horse races, the following amounts shall be paid or retained:

- a. From the first \$20,000 of gross daily receipts, the licensee shall retain the entire amount;
- b. From the next \$10,000 of gross daily receipts (gross daily receipts between \$20,000 and \$30,000), the public school income fund and the equine education account shall each receive one-eighth of one percent (.125%), and the licensee shall retain the balance;
- c. From the next \$10,000 of gross daily receipts (gross daily receipts between \$30,000 and \$40,000), the public school income fund and the equine education account shall each receive sixty-two and one-half hundredths percent (.625%), and the licensee shall retain the balance;
- d. From all amounts of over \$40,000 of gross daily receipts, the public school income fund and the equine education account shall each receive one and one-eighth percent (1.125%), and the licensee shall retain the balance.

The public schools' and the equine education account's share shall be paid by the licensee to the racing commission for deposit in the public school income fund or the equine education account as appropriate. The licensee's percentage shall be retained by the licensee.

(C) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle of one hundred thousand dollars (\$100,000) or less shall distribute all sums deposited in any pool as follows:

- (1) Seventy-seven percent (77%) of any win, place or show pool to the winner thereof, and twenty-three percent (23%) to the licensee;
- (2) Seventy-six and one-quarter percent (76.25%) of all other pools to the winner thereof, three-quarters of one percent (.75%) to the [Idaho state] racing commission for deposit in the racing account, and twenty-three percent (23%) to the licensee.

(D) Each licensee conducting the pari-mutuel system for live and simulcast horse races shall retain twenty-three percent (23%) of all sums

deposited in any pool, for distribution and payment based upon gross daily receipts as follows:

(1) One and one-quarter percent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission, for deposit in the racing commission account.

(2) One-half of one percent (.50%) of gross daily receipts from horse races, separately stated, shall be paid to the Idaho state racing commission for deposit in the track distribution account, for further distribution to certain Idaho horse race tracks, defined as follows:

- a. Recipient horse racing tracks shall be those which, during the race meet year of distribution, have a total race handle from both live races and simulcast races of less than five million dollars (\$5,000,000);
- b. Distributions to recipient horse racing tracks shall be weighted proportionately on the number of days raced during the year of distribution.

All moneys in the track distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to horse racing tracks shall be made annually but not later than December 15.

(3) One-half of one percent (.50%) of gross daily receipts from horse races, separately stated shall be paid by the licensee to the commission for deposit in the breed distribution account, for payment by the commission in proportion to the handle generated by each horse breed, to lawfully constituted representatives of each horse breed, to benefit owners and/or breeders of Idaho bred racing thoroughbreds, racing quarter horses, racing Appaloosas, racing paints and racing Arabians, subject to the approval of the commission. Moneys in the breed distribution account on December 31 of each year which have not been distributed by the commission shall be paid to the public school income fund. All moneys in the breed distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to representatives shall be made quarterly.

(4) Twenty and three-quarters percent (20.75%) of gross daily receipts from horse races shall be paid or retained as follows:

- a. From the first \$20,000 of gross daily receipts, the licensee shall retain twenty and three-quarters percent (20.75%);
- b. From the next \$10,000 of gross daily receipts (gross daily receipts between \$20,000 and \$30,000), the public school income fund and the equine education account shall each receive one-eighth of one percent (.125%), and the licensee shall retain twenty and one-half percent (20.50%);
- c. From the next \$10,000 of gross daily receipts (gross daily receipts between \$30,000 and \$40,000), the public school income fund and the equine education account shall each receive sixty-two and one-half hundredths percent (.625%), and the licensee shall retain nineteen and one-half percent (19.50%);
- d. From all amounts of over \$40,000 of gross daily receipts, the public school income fund and the equine education account shall each receive

one and one-eighth percent (1.125%), and the licensee shall retain eighteen and one-half percent (18.50%).

The public schools' share and the equine education account's share shall be paid by the licensee to the [Idaho state] racing commission for deposit in the public school income fund or the equine education account as appropriate. The licensee's percentage shall be retained by the licensee.

(E) Each licensee may retain the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of ten (10), known as breakage, and the total amount of unclaimed tickets at the termination of the time allowed by rule of the commission.

(F) If the fiscal year-end balance in the racing commission account exceeds six hundred thousand dollars (\$600,000), the excess shall be transferred by the office of the state controller to the pari-mutuel distribution fund, which is hereby created, for further distribution as follows:

(1) Sixty percent (60%) shall be deposited in the Idaho horse owner/breeder award account, which is hereby created in the pari-mutuel distribution fund, and shall be distributed by the [Idaho state] racing commission annually, but not later than December 15 of each year as follows:

- a. Fifty percent (50%) to the breeders of Idaho bred winners based on the number of live races by each breed for the current calendar year; and
- b. Fifty percent (50%) in equal amounts to owners of Idaho bred horse race winners.
- c. All moneys in the Idaho horse owner/breeder award account are hereby continuously appropriated to the commission for payment as required in this section.

(2) Forty percent (40%) shall be deposited in the track purse enhancement account, which is hereby created, and paid to all Idaho licensed horse racetracks for the purpose of purse enhancement based on the number of live race dates held the preceding calendar year. Track purse enhancement moneys shall be disbursed no later than thirty (30) days after Idaho state racing commission approval of live race meet license applications for the forthcoming calendar year. All moneys in the track purse enhancement account are hereby continuously appropriated to the commission for payment as required by this section.

History.

1969, ch. 221, § 4, p. 724; am. 1974, ch. 96, § 2, p. 1196; am. 1977, ch. 73, § 1, p. 142; am. 1980, ch. 123, § 2, p. 278; am. 1983, ch. 205, § 1, p. 557; am. 1985, ch. 194, § 2, p. 494; am. 1987, ch. 282, § 1, p. 592; am. 1987, ch. 316, § 5, p. 660; am. 1988, ch. 141, § 3, p. 256; am. 1990, ch. 241, § 1, p. 688; am. 1990, ch. 399, § 1, p. 1116; am. 1992, ch. 19, § 3, p. 55; am. 1992, ch. 77, § 1, p. 214; am. 1996, ch. 380, § 4, p. 1287; am. 1997, ch. 353, § 1, p. 1041; am. 1998, ch. 127, § 1, p. 474; am. 2000, ch. 245, § 2, p. 681; am. 2014, ch. 160, § 1, p. 447.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 160, in subsection (F), substituted "six hundred thou-

sand dollars (\$600,000)" for "\$400,000" in the introductory language and "Idaho horse owner/breeder award account" for "Idaho owner/breeder award account".

breeder award account" in paragraph (1)c.

Compiler's Notes.

The five bracketed insertions of "[Idaho

state]" in this section were added by the compiler to correct the name of the referenced agency.

CHAPTER 27

SCRAP DEALERS

SECTION.

54-2701. Definitions.

54-2702. Records required for purchasing nonferrous or stainless steel metal property from the general public.

SECTION.

54-2704. Record for commercial accounts.

54-2705. Reporting to law enforcement.

54-2706. Preserving evidence of metal theft.

54-2707. Unlawful violations and liability.

54-2708. Exemptions.

54-2701. Definitions. — The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial account" means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under this chapter.

(2) "Commercial enterprise" means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) "Commercial metal property" means property sold by a commercial enterprise consisting of: access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a municipality, governmental entity or a commercial enterprise, including, but not limited to, a telephone, cable, electric, water, natural gas, or other utility, or railroad materials; copper or aluminum wiring with associated clamps and connectors; aluminum or stainless steel fence panels; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation equipment not limited to wheels, sprinkler heads, or pivots or pipes.

(4) "Nonferrous metal property" means metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, gold, silver, platinum and their alloys, but shall not include aluminum beverage containers, used beverage containers or similar beverage containers; however, the term includes stainless steel beer kegs.

(5) "Record" means a paper, electronic, or other method of storing information.

(6) "Scrap metal business" means a scrap metal supplier, scrap metal recycling center, or scrap metal processor that is a commercial enterprise that purchases, receives and processes nonferrous metal property, stainless steel or commercial metal property.

(7) "Scrap metal processor" means a person with a current business license that conducts business from a permanent location, that is engaged in

the business of purchasing or receiving metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, crusher or shredding device for recycling.

(8) "Scrap metal recycling center" means a person with a current business license that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

(9) "Scrap metal supplier" means a person that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycling center or scrap metal processor and that does not maintain a fixed business location in the state.

(10) "Transaction" means a pledge, or the purchase of, or the trade of any item of nonferrous metal property by a scrap metal business from a member of the general public. "Transaction" does not include donations or the purchase or receipt of nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business.

History.

I.C., § 54-2701, as added by 2009, ch. 152, § 2, p. 441; am. 2013, ch. 286, § 1, p. 738; am.

2014, ch. 321, § 1, p. 795.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 286, added "but shall not include aluminum beverage containers, used beverage containers or similar beverage container; however, the term

includes stainless steel beer kegs" at the end of subsection (4).

The 2014 amendment, by ch. 321, rewrote subsections (2) and (5) and inserted "crusher" near the end of subsection (7).

54-2702. Records required for purchasing nonferrous or stainless steel metal property from the general public. — (1) At the time of a transaction, every scrap metal business doing business in this state shall produce, wherever that business is conducted, an accurate and legible record of each transaction involving nonferrous metal property or stainless steel metal property. This record must be written in the English language, documented on a standardized form or in electronic form, retained for five (5) years and contain the following information:

- (a) The signature of the person with whom the transaction is made;
- (b) The date, location and value of the transaction;
- (c) The name of the employee representing the scrap metal business in the transaction;
- (d) The name and street address of the person with whom the transaction is made;
- (e) A photocopy or digital image of a current driver's license that is valid to operate a motor vehicle in the state of Idaho or a United States or Idaho government-issued picture identification of the seller; and

(f) The license plate number of any vehicle required to have such a plate, if any, used by the person with whom the transaction is made.

(2) For every transaction that involves nonferrous or stainless steel metal property, every scrap metal business doing business in the state shall require the person with whom a transaction is being made to sign a declaration, which record must be maintained for five (5) years.

The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following: "I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated and the time of day noted by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

(3) All transactions involving the sale of nonferrous metal property shall include a digital, photographic or videographic image of the transaction to include the person, property and vehicle involved in the transaction. Such images shall be used exclusively for the purposes as defined in this section. The provisions of this subsection shall not apply upon and after the fourth purchase from the same member of the general public to the same scrap metal business within one (1) year.

History.

I.C., § 54-2702, as added by 2009, ch. 152,

§ 2, p. 441; am. 2013, ch. 286, § 2, p. 738; am. 2014, ch. 321, § 2, p. 795.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 286, added "and the photographs required in subsection (3) of this section" to the end of the first sentence in the introductory paragraph in subsection (1) and added subsection (3).

The 2014 amendment, by ch. 321, in the introductory language of subsection (1), deleted "and the photographs required in sub-

section (3) of this section" at the end of the first sentence and inserted "retained for five (5) years" in the second sentence; added "which record must be maintained for five (5) years" at the end of the first paragraph in subsection (2); and rewrote subsection (3), relating to records that should be kept when purchasing nonferrous or stainless steel metal from the public.

54-2704. Record for commercial accounts. — (1) Every scrap metal business must create and maintain a permanent record with a commercial enterprise, including another scrap metal business, in order to establish a commercial account. That record, at a minimum, must be retained for five (5) years and must include the following information:

- (a) The full name of the commercial enterprise or commercial account;
- (b) The business address and telephone number of the commercial enterprise or commercial account;
- (c) The full name of the primary contact of the commercial enterprise or whoever is authorized to deliver nonferrous metal and stainless steel and commercial metal property to the scrap metal business; and
- (d) The full name of the primary contact of the commercial enterprise who

is authorized to permit a scrap metal business to take possession of nonferrous metal and stainless steel and commercial metal property at the business location of the commercial enterprise.

(2) The record maintained by a scrap metal business for a commercial account must document every purchase or receipt of nonferrous metal and stainless steel and commercial metal property made in the previous five (5) years from the commercial enterprise. The documentation must include, at a minimum, the following information:

- (a) The time, date and value of the property being purchased or received;
- (b) A description of the predominant types of property being purchased or received.

(3) Payment for nonferrous metal and stainless steel and/or commercial metal property purchased or received by the scrap metal business under a commercial account will be made by cash, credit cards, electronic funds transfer or check payable to the commercial enterprise.

History.

I.C., § 54-2704, as added by 2009, ch. 152, § 2, p. 441; am. 2014, ch. 321, § 3, p. 795.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 321, inserted “be retained for five (5) years and must” in the last sentence of the introductory language in subsection (1); inserted “made in the previous five (5) years” in the first sentence of the

introductory language in subsection (2); and substituted “under a commercial account will be made by cash, credit cards, electronic funds transfer or check” for “will be made by check” in subsection (3).

54-2705. Reporting to law enforcement. — Upon request by any commissioned law enforcement officer of the state or any of its political subdivisions, every scrap metal business shall make available a full, true, and correct record from the purchase or receipt of nonferrous metal property or stainless steel involving a specific individual, vehicle, or item of nonferrous metal property or commercial metal property provided that such record still exists at the time of inquiry. This information may be transmitted within a specified time of not less than five (5) business days to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county’s chief law enforcement officer. The scrap metal business and law enforcement may arrange a time for law enforcement to review records in lieu of providing the records as set forth in this section.

History.

I.C., § 54-2705, as added by 2009, ch. 152, § 2, p. 441; am. 2014, ch. 321, § 4, p. 795.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 321, added

“provided that such record still exists at the time of inquiry” at the end of the first sen-

tence and added the last sentence in the section.

54-2706. Preserving evidence of metal theft. — Following notification, either verbally or in writing, from a commissioned law enforcement officer of the state or any of its political subdivisions, that an item of nonferrous metal property, stainless steel, or commercial metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling and shall place an identifying tag or other suitable identification upon the property. The scrap metal business shall hold the property for a period of time as directed by the applicable law enforcement agency up to a maximum of five (5) business days.

History.

I.C., § 54-2706, as added by 2009, ch. 152,

§ 2, p. 441; am. 2014, ch. 97, § 33, p. 265; am. 2014, ch. 321, § 5, p. 795.

STATUTORY NOTES

Amendments.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 97, deleted the subsection (1) designation from the section.

The 2014 amendment, by ch. 321, deleted the "(1)" designation from the section and substituted "five (5) business days" for "ten (10) business days" at the end of the section.

54-2707. Unlawful violations and liability. — (1) It is a misdemeanor for:

- (a) Any person to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of nonferrous metal property or commercial metal property in order to deceive a scrap metal business;
- (b) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;
- (c) Any person to sign the declaration required under this chapter knowing that the nonferrous metal property subject to the transaction is stolen;
- (d) Any scrap metal business to knowingly possess commercial metal property that was not lawfully purchased or received under the requirements of this chapter;
- (e) Any scrap metal business to engage in a series of transactions valued at less than twenty dollars (\$20.00) with the same seller at the same location within a twenty-four (24) hour period of time for the purposes of avoiding the requirements of this chapter; or
- (f) Any person to intentionally violate the provisions of section 54-2703, Idaho Code.

(2) Any person, other than a scrap metal business, who has pled guilty to or been found guilty of violating the provisions of this section for a second time within five (5) years is guilty of a felony.

(3) A person who knowingly and intentionally takes copper or other nonferrous metals from an electrical substation without authorization of the utility, or who knowingly and intentionally takes copper or other nonferrous metals from a utility or communications services provider, thereby causing damage to the facilities of a utility or communications services provider, or interfering with the ability of a utility or communications services provider to provide service, is guilty of a felony.

(4)(a) A public or private owner of metal property is not civilly liable to a person who is injured during the theft or attempted theft of metal property.

(b) A public or private owner of metal property is not civilly liable to a person for injuries caused by a dangerous condition created as a result of the theft or attempted theft of the owner's metal property when the owner did not know, and could not have reasonably known, of the dangerous condition.

This section does not create or impose a duty of care upon an owner of metal property that would not otherwise exist under common law.

History.

I.C., § 54-2707, as added by 2009, ch. 152, § 2, p. 441; am. 2013, ch. 286, § 3, p. 738; am.

2014, ch. 321, § 6, p. 795.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 286, added "and liability" to the section heading, designated the extant provisions of the section as subsections (1) and (2); and added subsections (3) and (4).

The 2014 amendment, by ch. 321, inserted "knowingly" in paragraph (1)(d); inserted "at the same location within a twenty-four (24) hour period of time" in paragraph (1)(e); and inserted "other than a scrap metal business" in subsection (2).

54-2708. Exemptions. — The provisions of this chapter do not apply to transactions conducted by the following:

(1) Motor vehicle dealers that do not meet the definition of a scrap metal business as described in section 54-2701, Idaho Code;

(2) Persons in the business of operating an automotive repair facility that do not meet the definition of a scrap metal business as described in section 54-2701, Idaho Code;

(3) Persons in the business of buying or selling empty food and beverage containers, including metal food and beverage containers, except beer kegs;

(4) Transactions of a value of less than twenty dollars (\$20.00);

(5) Entities or individuals who do not receive compensation for the metal property; and

(6) Authorized insurers as defined in section 41-110(1), Idaho Code.

History.

I.C., § 54-2708, as added by 2009, ch. 152, § 2, p. 441; am. 2014, ch. 321, § 7, p. 795.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 321, added

"that do not meet the definition of a scrap metal business as described in section 54-

2701, Idaho Code" at the ends of subsections (1) and (2) and added subsections (5) and (6).

CHAPTER 29

SPEECH AND HEARING SERVICES PRACTICE ACT

SECTION.

54-2909. Officers — Quorum — Meetings — Compensation.

54-2909. Officers — Quorum — Meetings — Compensation. —

(1) The board, within sixty (60) days after the effective date of this act and annually thereafter, shall hold a meeting and elect one (1) of its members as chairperson, to serve a one (1) year term in such capacity, who shall preside at meetings of the board. In the event the chairperson is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairperson.

(2) Four (4) members of the board shall constitute a quorum, provided at least one (1) board member of the relevant profession is present when any board action is taken that affects the profession, its licensees or applicants. The board may act by virtue of a majority vote of members present in which a quorum is present.

(3) The board shall meet at least two (2) times per year at a place, day and hour determined by the board. Other meetings may be convened at the call of the chairperson or upon the written request of any two (2) board members.

(4) Members of the board shall be compensated as provided by section 59-509(n), Idaho Code.

History.

I.C., § 54-2909, as added by 2005, ch. 277, § 2, p. 852; am. 2014, ch. 105, § 1, p. 312.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 105, substituted "board member of the relevant profession is present when any board action is taken that affects the profession, its licensees or applicants" for "audiologist, one (1) speech-language pathologist, the hearing aid dealer and fitter member and the public member are present" in the first sentence in subsection (2).

Compiler's Notes.

The phrase "effective date of this act" in subsection (1) refers to the effective date of S.L. 2005, chapter 277, which was July 1, 2005.

CHAPTER 30

LANDSCAPE ARCHITECT REGISTRATION AND LICENSING ACT

SECTION.

54-3002. Definitions.

54-3002. Definitions. — As used in this chapter:

(1) "Landscape architect" means a person who holds a license to practice landscape architecture in the state of Idaho under the authority of this chapter.

(2) "Landscape architecture" means the performance of professional services such as consultations, investigation, reconnaissance, research, planning, design or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that the dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, approaches to buildings, structures, facilities or other improvements, natural drainage and the consideration and determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards, but shall not include the application of geological principles. This practice shall include the location, design and arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and features as are incidental and necessary to the purposes outlined herein, but shall not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of cadastral surveys or final land plats for official recording or approval. It involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites.

(3) "Board" means the Idaho state board of landscape architects.

(4) "Department" means the department of self-governing agencies of the state of Idaho.

(5) "Landscape architect-in-training" means a person who has met the qualifications of section 54-3003(2)(a) and (b), Idaho Code, and is working under the supervision of a licensed landscape architect. A landscape architect-in-training shall use the title "landscape architect-in-training" in accordance with board rule.

(6) "Public" means any person, firm, corporation, partnership, company, government agency, institution or any other entity recognized by law.

(7) "Rules of professional responsibility" means those rules, if any, promulgated by the board.

History.

1972, ch. 390, § 2, p. 771; am. 1974, ch. 13, am. 2014, ch. 155, § 1, p. 437.

§ 189, p. 138; am. 2003, ch. 225, § 1, p. 578;

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 155, inserted

“(a) and (b)” in the first sentence in subsection
(5).**CHAPTER 32****SOCIAL WORK LICENSING ACT****SECTION.**

54-3204. Board — Powers and duties.

suspension or revocation of li-
cense — Unprofessional con-
duct.

54-3211. Refusal to issue, refusal to renew,

54-3204. Board — Powers and duties. — The board shall have the following powers and duties:

- (1) Adopt and amend rules to administer and carry out the provisions of this chapter and for the conduct of its affairs, provided that such rules shall be promulgated in accordance with the provisions of chapters 26 and 52, title 67, Idaho Code;
- (2) Maintain a list of the names and addresses of all persons licensed under this chapter;
- (3) At its discretion, contract with the bureau of occupational licenses for those services deemed necessary for the proper administration of this chapter;
- (4) To prescribe by rule the minimum amount and kind of continuing education to be required of each social worker seeking to renew a license in the state of Idaho;
- (5) To establish by rule an inactive license status;
- (6) To take such action as may be necessary to enforce the provisions of this chapter and to regulate the practice of social work;
- (7) To review the practice of a social worker licensed pursuant to this chapter who is the subject of a complaint regarding a potential violation of the provisions of this chapter. This review may include client records, notes of the license holder and other materials related to the practice. The review will remain subject to nondisclosure according to the provisions of chapter 3, title 9, Idaho Code, unless the written consent of the client is received by the board;
- (8) To establish by rule the standards and requirements for the use of communication technology in the practice of social work, including supervision.

History.I.C., § 54-3204, as added by 1976, ch. 213,
§ 1, p. 776; am. 1994, ch. 139, § 1, p. 311; am.2002, ch. 85, § 3, p. 189; am. 2008, ch. 15, § 1,
p. 21; am. 2013, ch. 15, § 1, p. 25; am. 2014,
ch. 54, § 1, p. 132.**STATUTORY NOTES****Amendments.**The 2013 amendment, by ch. 15, substi-
tuted “this chapter” for “this act” at the end of
subsection (3) and added subsection (7).The 2014 amendment, by ch. 54, added
subsection (8).

54-3211. Refusal to issue, refusal to renew, suspension or revocation of license — Unprofessional conduct. — The board may refuse to issue, refuse to renew, may suspend, or may revoke any license issued under this chapter, or take other disciplinary action, upon proof, after a hearing, that the person has engaged in “unprofessional conduct.” The words “unprofessional conduct” as relating to persons licensed under this chapter are defined to include but are not limited to:

- (1) Conviction of a felony, or of any offense involving moral turpitude.
- (2) Habitual drunkenness or addiction to habit-forming drugs, either of which impairs the ability to perform his work without danger to himself or the public he serves.
- (3) Fraud or deceit in connection with services rendered as a social worker, masters social worker or clinical social worker or in establishing qualifications for licensure under this chapter.
- (4) Aiding or abetting any person not licensed under this chapter in the practice of social work in the state of Idaho.
- (5) Failing to be licensed or continuing to represent himself as licensed after the expiration of his license.
- (6) Being found guilty of unprofessional conduct by the rules established by the board.
- (7) Having had a license or registration to practice social work revoked, suspended or otherwise disciplined in any state, territory or county.
- (8) Failing to comply with a board order entered in a disciplinary action.
- (9) Failing to comply with any of the provisions of this chapter.

History.

I.C., § 54-3211, as added by 1976, ch. 213, § 1, p. 776; am. 2001, ch. 78, § 2, p. 198; am.

2002, ch. 85, § 8, p. 189; am. 2013, ch. 15, § 2, p. 25.

Amendments.

The 2013 amendment, by ch. 15, added present subsections (7) and (8) and redesign-

nated former subsection (7) as present subsection (9).

STATUTORY NOTES**SECTION.**

54-3404. Idaho state licensing board of professional counselors and mar-

riage and family therapists — Powers.

54-3404. Idaho state licensing board of professional counselors and marriage and family therapists — Powers. — The board shall have the following powers:

- (1) To regulate the practice of professional counselors, clinical professional counselors, associate marriage and family therapists and marriage and family therapists in the state of Idaho.
- (2) To pass upon the qualifications and fitness of applicants for licenses

and to adopt rules requiring annual continuing education as a condition for the renewal of licenses issued under this chapter.

(3) To adopt and from time to time revise such rules as may be necessary to carry into effect the provisions of this chapter. Such rules shall include, but not be limited to, a code of ethics for professional counselors and a code of ethics for marriage and family therapists in the state, which shall be adopted in compliance with chapter 52, title 67, Idaho Code.

(4) To review the practice of professional counselors, clinical professional counselors, associate marriage and family therapists and marriage and family therapists licensed under this chapter and charged with a violation of the provisions of this chapter. This review may include the notes of the license holder and other materials related to the practice. The review will remain subject to disclosure according to chapter 3, title 9, Idaho Code, unless the written consent of the client is received by the board.

(5) To establish a peer review system whereby each license holder's practice may be reviewed to ensure continuing practice in an appropriate and ethical manner.

(6) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of applicants pursuant to this chapter, and to conduct hearings in connection therewith.

(7) To conduct hearings to suspend or revoke licenses for violations of the law and rules adopted pursuant to this chapter and cause the prosecution and enjoinder of all such violations.

(8) In any proceeding before the board authorized by this chapter, the board or its designee may administer oaths or affirmations to witnesses appearing before it.

(9) To authorize, by written agreement, the chief of the bureau of occupational licenses as agent to act in its interest.

(10) To provide, by rule, licensed professional counselor, licensed clinical professional counselor, licensed associate marriage and family therapist and licensed marriage and family therapist specialty standards.

(11) To establish by rule the standards and requirements for the use of communication technology in the practice of counseling and marriage and family therapy, including supervision.

History.

I.C., § 54-3404, as added by 1982, ch. 183, § 1, p. 480; am. 1990, ch. 213, § 82, p. 480; am. 1993, ch. 65, § 1, p. 166; am. 1993, ch. 205, § 1, p. 563; am. 2001, ch. 71, § 5, p. 142; am. 2004, ch. 312, § 1, p. 874; am. 2012, ch. 68, § 5, p. 191; am. 2014, ch. 53, § 1, p. 131.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 53, added subsection (11).

CHAPTER 35

DIETITIANS

SECTION.

54-3503. License required.

54-3504. Dietetic licensure board created —
Appointment — Terms.

SECTION.

54-3508. Waiver of requirements.

54-3503. License required. — (1) From and after January 1, 1995, it is unlawful for any person to assume or use the title or designation of "dietitian," "certified dietitian," "registered dietitian," or any other combination of terms that include the title "dietitian," unless such person has been issued a license pursuant to this chapter and the license is in good standing pursuant to rules of the board. Nothing contained herein shall be construed to prohibit the use of the term "dietetic" or "diet" as a descriptive term in connection with a person's occupation or employment.

(2) No person shall use any other title, designation, words, letters, abbreviations, or sign, card or device which indicates to the public that such person is a dietitian or has been issued a temporary permit pursuant to this chapter unless the person is so licensed or has been issued such permit, and the license or permit is in good standing pursuant to rules of the board.

(3) A person who is a registered dietitian, as determined by the commission on dietetic registration of the academy of nutrition and dietetics, or, who is credentialed as a dietitian by any other association which is also recognized by the national commission for certifying agencies, may continue to use such credential without being licensed pursuant to this chapter as long as the person does not engage in activities set forth in section 54-3505(3), Idaho Code.

History.

I.C., § 54-3503, as added by 1994, ch. 217,
§ 1, p. 674; am. 2013, ch. 187, § 10, p. 447.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 187, substituted "academy of nutrition and dietetics" for "American dietetic association" in subsection (3).

Compiler's Notes.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

For more on the academy of nutrition and dietetics, see <http://www.eatright.org/>.

54-3504. Dietetic licensure board created — Appointment — Terms. — (1) A dietetic licensure board is hereby created and the members thereof shall be appointed by the Idaho state board of medicine within sixty (60) days following the effective date of this chapter.

(2) The dietetic licensure board shall consist of four (4) members, three (3) of whom shall be dietitians and one (1) member shall be a member of the public with an interest in the rights of the consumer of health care services.

(3) In making appointments to the dietetic licensure board, the board shall give consideration to recommendations made by the Idaho academy of

nutrition and dietetics, other professional organizations and dietitians and physicians.

(4) All members of the dietetic licensure board shall be current residents of the state of Idaho and have been residents of the state of Idaho for a minimum of three (3) years immediately preceding appointment.

(5) The initial three (3) dietitian members of the dietetic licensure board shall be persons registered by the commission on dietetic registration, academy of nutrition and dietetics, who are eligible to become licensed pursuant to this chapter, and who shall, within such time as may be established by the board, become licensed pursuant to this chapter.

(6) The initial dietetic licensure board shall be appointed for staggered terms, the longer of which will not exceed four (4) years. After the initial appointments, all terms shall be four (4) years, and a member may be reappointed. In the event of death, resignation, or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(7) The board may, upon recommendation of the dietetic licensure board, or upon its own motion, remove any member of the dietetic licensure board, for cause, prior to the expiration of the member's term.

(8) The dietetic licensure board shall, within thirty (30) days after its appointment, and at least annually thereafter, hold a meeting and elect a chairperson. The licensure board may hold additional meetings on the call of the chairperson or at the written request of any two (2) members of the licensure board. The licensure board may appoint such committees as it considers necessary to carry out its duties. A majority of the members of the licensure board shall constitute a quorum.

(9) Each member of the licensure board shall be compensated as provided in section 59-509(n), Idaho Code.

History.

I.C. § 54-3504, as added by 1994, ch. 217,

§ 1, p. 674; am. 2012, ch. 91, § 1, p. 253; am. 2013, ch. 187, § 11, p. 447.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 187, substituted "academy of nutrition and dietetics" for "dietetic association" in subsection (3) and substituted "academy of nutrition and dietetics" for "American dietetic association" in subsection (5).

in subsection (1) refers to the effective date of S.L. 1994, ch. 217, which was effective July 1, 1994.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

For more on the Idaho academy of nutrition & dietetics, see <http://eatrightidaho.org>.

For more on the academy of nutrition and dietetics, see <http://www.eatright.org/>.

Compiler's Notes.

The phrase "effective date of this chapter"

54-3508. Waiver of requirements. — (1) The licensure board shall grant a license to any person who, on the effective date of this chapter, is registered as a dietitian by and with the commission on dietetic registration for the academy of nutrition and dietetics, a member of the national commission for certifying agencies.

(2) The licensure board may waive the examination, education, or expe-

rience requirements and grant a license to any person registered by the commission after the effective date of this chapter if the board determines the requirements for such registration to be equivalent to the requirements for licensure set forth in this chapter.

(3) The licensure board may waive the examination, education, or experience requirements and grant a license to any applicant who shall present proof of current licensure to engage in the practice of dietetics in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure pursuant to this chapter.

History.

I.C., § 54-3508, as added by 1994, ch. 217, § 1, p. 674; am. 2013, ch. 187, § 12, p. 447.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 187, in subsection (1), substituted "academy of nutrition and dietetics" for "American dietetic association" and deleted "health" preceding "certifying agencies" at the end.

Compiler's Notes.

The phrase "effective date of this chapter"

in subsections (1) and (2) refers to the effective date of S.L. 1994, chapter 217, which was effective July 1, 1994.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

For more on the academy of nutrition and dietetics, see <http://www.eatright.org/>.

CHAPTER 37**OCCUPATIONAL THERAPY PRACTICE ACT****SECTION.**

54-3705. Limited permit — Temporary license.

54-3705. Limited permit — Temporary license. — (1) A limited permit may be granted to a graduate occupational therapist or a graduate occupational therapy assistant who has completed the education and experience requirements of this chapter for an occupational therapist or an occupational therapy assistant. The permit shall allow a person to practice occupational therapy under supervision as defined in section 54-3715, Idaho Code. This permit shall be valid for a period of six (6) months or as extended by the board.

(2) A temporary license may be issued by the board to an applicant who is currently licensed and in good standing to practice in another jurisdiction and meets the requirements for licensure by endorsement of the other jurisdiction while the application is being processed by the board.

History.

I.C., § 54-3705, as added by 1987, ch. 69, § 1, p. 123; am. 2009, ch. 222, § 5, p. 691; am.

§ 1, p. 123; am. 2009, ch. 222, § 5, p. 691; am.

2013, ch. 14, § 1, p. 24.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 14, deleted "and" preceding "temporary" from the section heading and substituted the present last sentence of subsection (1) for: "This permit shall

be valid until the person is issued a license under section 54-3710, Idaho Code, or until the results of the examination taken are available to the board. The board may renew a limited permit once."

CHAPTER 40**MASSAGE THERAPISTS****54-4011. License renewal.****STATUTORY NOTES****Compiler's Notes.**

This section heading is set out in the sup-

plement to correct an error in the bound volume.

CHAPTER 41**IDAHO REAL ESTATE APPRAISERS ACT****SECTION.**

54-4105. Exceptions.

54-4106. Real estate appraisers — Real es-

tate appraiser board — Powers and duties — Compensation.

54-4105. Exceptions. — (1) The provisions of this chapter do not restrict the right to use the term "appraiser," provided that such term is not used in a manner that creates the impression of certification by the state of Idaho to perform real estate appraisals other than ad valorem tax appraisals. However, nothing in this chapter shall entitle a state licensed or state certified real estate appraiser to appraise real estate for ad valorem tax purposes unless he has first been certified by the Idaho state tax commission pursuant to section 63-105A(17), Idaho Code.

(2) The provisions of this chapter shall not apply to a licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser.

(3) The provisions of this chapter shall not prohibit a real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, whose license is active and in good standing, from rendering a broker's price opinion, for which the broker may charge a fee, provided the broker's price opinion complies with the following requirements:

- (a) The broker's price opinion shall be in writing and contain the following:
 - (i) A statement of the intended purpose of the price opinion;
 - (ii) A brief description of the subject property and property interest to be priced;
 - (iii) The basis of reasoning used to reach the conclusion of the price,

including the applicable market data and/or capitalization computation;

- (iv) Any assumptions or limiting conditions;
- (v) A disclosure of any existing or contemplated interest of the broker(s) issuing the opinion;
- (vi) The name and signature of the broker(s) issuing the price opinion and the date of its issuance;
- (vii) A disclaimer that, unless the broker is licensed under the Idaho real estate appraisers act, chapter 41, title 54, Idaho Code, the report is not intended to meet the uniform standards of professional appraisal practice;
- (viii) A disclaimer that the broker's price opinion is not intended to be an appraisal of the market value of the property, and that if an appraisal is desired, the services of a licensed or certified appraiser should be obtained.

The broker's price opinion permitted under this chapter may not be used as an appraisal, or in lieu of an appraisal, in a federally related transaction.

(4) Any person who is not licensed or certified under the provisions of this chapter may assist a state licensed or certified real estate appraiser in the performance of an appraisal, provided that he is actively and personally supervised by the state licensed or certified appraiser and provided further that any appraisal report rendered in connection with the appraisal is reviewed and signed by the state licensed or certified real estate appraiser.

(5) The provisions of this chapter requiring mandatory licensure or certification shall not apply to employees or agents of the Idaho transportation department or a local highway jurisdiction when estimating the market value for property that is subject to eminent domain by the department or local highway jurisdiction, or property owned by the department or local highway jurisdiction that has been declared surplus, where a noncomplex appraisal would normally be ordered, and the market value is ten thousand dollars (\$10,000) or less. Such estimates of market value shall be reviewed and approved by an Idaho state certified general real estate appraiser. Idaho state certified general real estate appraisers who estimate or review market value of property under this section shall be exempt from the requirements of uniform standards of professional appraisal practice. A value estimate shall be provided to the property owner who shall also be informed of his right to request and receive an appraisal of his property.

(6) This chapter shall not prohibit a property owner from expressing his personal opinion of the value of his own property, nor shall the provisions of this chapter prohibit a lender, or employee of a lending institution, from forming and expressing an opinion of collateral value in the ordinary course of business including, but not limited to, mortgaging property, underwriting a loan, or foreclosing a loan, so long as such opinion of collateral value is not represented as being an appraisal of the market value of the property, or prepared under the provisions of this chapter.

(7) This chapter shall not prohibit an attorney or accountant from rendering professional advice within the ordinary course of his profession,

so long as such advice is not represented to be an appraisal of the market value of the property.

History.

I.C., § 54-4105, as added by 1990, ch. 82, § 1, p. 164; am. 1992, ch. 92, § 5, p. 282; am. 1993, ch. 320, § 1, p. 1178; am. 1994, ch. 71, § 1, p. 148; am. 1996, ch. 137, § 1, p. 462, am.

1996, ch. 322, § 56, p. 1029; am. 1999, ch. 54, § 3, p. 136; am. 2002, ch. 31, § 1, p. 45; am. 2004, ch. 85, § 1, p. 319; am. 2013, ch. 137, § 1, p. 321.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 137, inserted “or local highway jurisdiction” or similar language three times in the first sentence in subsection (5).

Compiler's Notes.

For more on the uniform standards of pro-

fessional appraisal practice, referred to in paragraph (3)(a)(vii) and subsection (5), see http://appraisalinstitute.org/ppc/ethics_standards.aspx.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

54-4106. Real estate appraisers — Real estate appraiser board — Powers and duties — Compensation. — (1) There is hereby created in the department of self-governing agencies, a real estate appraiser board, hereinafter referred to as the “board,” which shall administer the provisions of this chapter. The board shall consist of five (5) members to be appointed by the governor as follows:

(a) One (1) from the northern district consisting of the counties of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner; one (1) from the southeastern district consisting of the counties of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock; one (1) from the southwestern district consisting of the counties of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley; one (1) from the south central district consisting of the counties of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls; and one (1) from the state at large;

(b) On July 1, 1990, the governor shall appoint the members of the board, each of whom shall be a real estate appraiser with not less than five (5) years' experience in the real estate appraisal business in Idaho. As of July 1, 1999, the board appointment from the state at large is extended for a period of two (2) years and the board appointment from the south central district is extended for a period of one (1) year. Each regular appointment thereafter, other than an appointment to fill an unexpired term, shall be for a term of four (4) years and each board member shall hold office until a successor is appointed and qualified. Upon the death, resignation or removal of any member of the board, the governor shall appoint a state licensed or state certified real estate appraiser to fill the unexpired term. Appointments to fill any vacancy other than that resulting from the expiration of a term shall be made for the unexpired term. After July 1, 1991, new board members shall be required to be state licensed or certified real estate appraisers with not less than five (5) years' experience in the real estate appraisal business in Idaho;

(c) Within fifteen (15) days after the appointment of the members of the board, the board shall call a meeting and organize by the election of a chairman. Thereafter, the chairman may call meetings of the board whenever he deems it advisable but if he refuses to call a meeting upon written demand of the other four (4) members of the board, then such members may call such meeting. Reasonable notice shall be given in writing by mail of such meeting.

(2) The board shall have, in addition to the powers conferred elsewhere in this chapter, the following powers and duties:

- (a) To authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest;
- (b) To adopt, pursuant to the administrative procedure act, such rules as the board, in its discretion, deems necessary for the administration and enforcement of this chapter, and any such rules deemed necessary by the board to keep the Idaho real estate appraisers act in compliance with federal law, rule, regulation or policy;
- (c) To conduct investigations into violations of the provisions of this chapter;
- (d) To receive applications for and issue licenses or certificates to real estate appraisers pursuant to this chapter;
- (e) To hold meetings, hearings and examinations at such places and at such times as it shall designate;
- (f) To collect, deposit and disburse application and other fees, as required by this chapter or federal law;
- (g) To maintain a register of all state licensed or certified residential and state certified general real estate appraisers;
- (h) To censure a state licensed or certified appraiser or suspend or revoke appraisal licenses or certificates as provided in this chapter, subject to the provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code;
- (i) To adopt rules governing the registration and limitations of real estate appraiser trainees; and
- (j) To require new applicants to submit to a satisfactory fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database and to collect fees from applicants for the costs of such background check.

(3) Each member of the board of real estate appraisers shall be compensated as provided in section 59-509(m), Idaho Code.

History.

I.C., § 54-4106, as added by 1990, ch. 82, § 1, p. 164; am. 1992, ch. 92, § 6, p. 282; am. 1996, ch. 66, § 8, p. 198; am. 1999, ch. 162, § 1, p. 448; am. 2001, ch. 132, § 1, p. 477; am. 2014, ch. 156, § 1, p. 438.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 156, added paragraph (2)(j).

base, referred to in paragraph (2)(j), is the state's central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification.

See http://www.isp.idaho.gov/identification/crime_history.

Compiler's Notes.

The Idaho central criminal history data-

CHAPTER 45

PUBLIC WORKS CONSTRUCTION MANAGEMENT LICENSING ACT

SECTION.

54-4503. Definitions.

54-4511. Award of contracts — Dual capacity.

SECTION.

54-4512. Requirement of bond.

54-4503. Definitions. — As used in this chapter:

(1) "Applicant" means an individual who applies for a license or interim license pursuant to the provisions of this chapter.

(2) "Board" means the public works contractors license board established in section 54-1905, Idaho Code.

(3) "Construction manager" means an individual who performs construction management services.

(4) "Construction management services" means representation of an owner in public works construction by a person with substantial discretion and authority to plan including scheduling, estimating and approval, coordinate, manage or direct phases of a project for the construction, demolition, alteration, repair or reconstruction of any public work. This definition shall not include services for which the laws of this state require a person to be licensed as an architect or registered as a professional engineer, nor shall it include services traditionally and customarily provided by licensed architects or registered professional engineers. This definition shall not apply to highway, road or other transportation projects.

(5) "Firm" means any business organization, including individuals, partnerships, corporations, associations or any combination thereof acting as a unit.

(6) "Licensure" means the issuance of a license to an applicant under the provisions of this chapter authorizing such individual to offer and perform construction management services.

(7) "Person" includes an individual, partnership, corporation, association or other organization.

History.

I.C., § 54-4503, as added by 1998, ch. 410,

§ 1, p. 1267; am. 2005, ch. 213, § 33, p. 637;
am. 2014, ch. 132, § 1, p. 367.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 132, in subsection (4), deleted "as defined in section 54-1901(2)(c), Idaho Code" following "public works construction," deleted the former second sentence, which read: "This definition

shall not include general contracting services provided by public works contractors who actually perform the work of construction, alteration, repair or reconstruction," and added the last sentence.

54-4511. Award of contracts — Dual capacity. — (1) Construction manager representative (CMR). A licensed construction manager and the firm of which he is a principal or full-time employee may be awarded a contract to act only as representative for an owner. In soliciting bids or

awarding contracts for public works construction to be entered into by the owner, a licensed construction manager representative shall comply with all notice and bidding laws with which an owner would be required to comply if it were to do the same activities without the assistance of a construction manager.

A licensed construction manager representative and the firm of which he is a principal or employee shall not provide construction management services for a construction project on which the licensed construction manager or his firm also provides design services or other construction related services, whether as a contractor or subcontractor. Provided however, that this section shall not preclude a licensed architect or registered professional engineer from providing public works construction management services which are normally provided by licensed architects or registered professional engineers for a project on which the person or firm has provided design services. Such public works construction management services provided by a licensed architect or registered professional engineer shall not include the procurement of equipment or construction work required by law to be competitively bid for public works construction.

(2) Construction manager/general contractor (CM/GC). A licensed construction manager and the firm of which he is a principal or full-time employee may be awarded a contract to act as both construction manager and general contractor provided the construction manager/general contractor has a valid public works contractor license as a general contractor pursuant to section 54-1902, Idaho Code.

(3) No public entity shall enter into a contract with any person or firm for construction management services as construction manager representative or as construction manager/general contractor if such person or firm is required to be licensed under this chapter unless:

- (a) Such person holds a valid license or such firm holds a valid certificate issued pursuant to this chapter; and
- (b) The selection of such construction manager representative or construction manager/general contractor is made pursuant to section 67-2320, Idaho Code.

(4) Compensation of a construction manager shall be determined pursuant to section 67-2320, Idaho Code. At such time as the design of a project is available, the construction work, materials and equipment for construction of a project may be incorporated into the construction manager/general contractor contract based upon bids solicited from licensed public works contractors and from suppliers. All construction work, materials and equipment shall be competitively bid to be opened publicly in the presence of a representative of the public body for whom the project is undertaken and shall be awarded to the lowest responsible bidders. The construction manager/general contractor, or its subsidiaries and affiliated companies, may bid to perform construction work or supply materials or equipment for which it holds a valid license pursuant to section 54-1902, Idaho Code, and which it customarily self-performs or supplies.

History.

I.C., § 54-4511, as added by 1998, ch. 410, § 1, p. 1267; am. 2014, ch. 132, § 2, p. 367.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 132, rewrote the section to the extent that a detailed com-

parison is impracticable, adding present subsections (2) and (4).

54-4512. Requirement of bond. — A licensed construction manager representative or firm providing public works construction management services shall be required to post a payment and performance bond or bonds in the amount of the total construction management contract to secure the construction manager's obligations thereunder. A construction manager/general contractor shall provide payment and performance bonds to secure construction of the project in the amounts required in section 54-1926, Idaho Code.

History.

I.C., § 54-4512, as added by 1998, ch. 410, § 1, p. 1267; am. 2014, ch. 132, § 3, p. 367.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 132, substituted "manager representative" for "man-

ager" in the first sentence and added the last sentence.

JUDICIAL DECISIONS**Failure to Secure Bond.**

Statutory violation of this section, where the construction manager did not secure a performance bond, would not render void the construction management agreement, as it could have been performed legally and there

was no evidence that the agreement was made for the purpose of furthering any matter prohibited by statute or that it was founded on something illegal. *City of Meridian v. Petra Inc.*, 154 Idaho 425, 299 P.3d 232 (2013).

CHAPTER 47

ACUPUNCTURE

SECTION.

54-4702. Definitions.

54-4702. Definitions. — As used in this chapter:

(1) "Acupuncture" means that theory of health care developed from traditional and modern Oriental medical philosophies that employs diagnosis and treatment of conditions of the human body based upon stimulation of specific acupuncture points on meridians of the human body for the promotion, maintenance, and restoration of health and for the prevention of disease. Therapies within the scope of acupuncture include manual, mechanical, thermal, electrical and electromagnetic treatment of such specific indicated points. Adjunctive therapies included in, but not exclusive to,

acupuncture include herbal and nutritional treatments, therapeutic exercise and other therapies based on traditional and modern Oriental medical theory.

(2) "Board" means the Idaho state board of acupuncture.

(3) "NCCAOM" means "National Certification Commission for Acupuncture and Oriental Medicine."

(4) "Practice of acupuncture" means the insertion of acupuncture needles and use of similar devices and therapies, including application of moxibustion, to specific indicated points on the skin of the human body as indicated pursuant to traditional and modern theories of Oriental medicine. The "practice of acupuncture" does not include:

(a) Surgery; or

(b) Prescribing, dispensing or administering any prescription drug or legend drug as defined in section 54-1705(36), Idaho Code.

History.

I.C., § 54-4702, as added by 1999, ch. 379, § 1, p. 1039; am. 2002, ch. 26, § 2, p. 29; am. 2006, ch. 290, § 4, p. 888; am. 2009, ch. 244,

§ 6, p. 748; am. 2011, ch. 135, § 6, p. 375; am.

2013, ch. 28, § 16, p. 52; am. 2013, ch. 270,

§ 6, p. 698; am. 2014, ch. 146, § 8, p. 391.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 28, updated the reference near the end of paragraph (4)(b) in light of the 2013 amendment of § 54-1705.

The 2013 amendment, by ch. 270, updated the reference in paragraph (4)(b) in light of the 2013 amendment of § 54-1705.

The 2014 amendment, by ch. 146, updated a reference in paragraph (4)(b) in light of the 2014 amendment of § 54-1705.

Compiler's Notes.

For more on the national certification commission for acupuncture and oriental medicine, see <http://www.nccaom.org>.

CHAPTER 50

INSTALLATION OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS

SECTION.

54-5015. Exclusive jurisdiction of the state — Restriction on requirement for additional licenses or fees —

Clarification of certification, licensing and permitting requirements.

54-5015. Exclusive jurisdiction of the state — Restriction on requirement for additional licenses or fees — Clarification of certification, licensing and permitting requirements. — (1) Only the administrator of the division of building safety of the state of Idaho is authorized and empowered to conduct examinations and to pass upon the qualifications of applicants, and to grant and issue certificates of competency and registration of apprentices to such applicants as are found to be qualified to engage in the trade, business, work or practice of heating, ventilation and air conditioning.

(2) No local jurisdiction shall have the authority to require additional

certification or registration or to require payment of any fees in order for any HVAC contractor, specialty contractor, journeyman, specialty journeyman, apprentice, or specialty apprentice to engage in the heating, ventilation and air conditioning trade within the local jurisdiction or to issue certificates to persons certified or registered under the provisions of this chapter.

(3) Nothing in this chapter shall restrict a city or county from imposing stricter public safety rules, notwithstanding any provision of Idaho Code.

(4) A certificate issued pursuant to chapter 26, title 54, Idaho Code, or a license issued pursuant to chapter 10, title 54, Idaho Code, shall be acceptable for all HVAC installation work that falls within the scope of the certificate or license that has been issued. This will allow:

(a) Individuals holding a current HVAC or electrical license or a current plumbing certification to install electrical circuitry from the disconnecting means to a water heater and electrical connections to the water heater as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the water heater is no more than fifty (50) feet long;

(b) Individuals holding a current HVAC or electrical license to install:

(i) Electrical space heaters with no attached ductwork;

(ii) Electrical connections to HVAC equipment from the disconnecting means to the unit as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the HVAC equipment is no more than fifty (50) feet long; and

(iii) Ventilating fans, except ducted range hoods in residences;

(c) Individuals holding either an HVAC certification or plumbing certification to install:

(i) Boilers that are not otherwise subject to inspection by the industrial commission or its authorized agent;

(ii) Fuel piping;

(iii) Piping for hydronic systems; and

(iv) Piping for steam and hot water boiler systems;

(d) HVAC licensees to install control wiring of twenty-four (24) volts or less for HVAC equipment of five (5) tons or less in capacity.

(5) Notwithstanding any other provision of this section, plumbing certificate holders are not authorized to install control wiring in HVAC equipment, regardless of voltage.

History.

I.C., § 54-5015, as added by 2003, ch. 276, § 1, p. 733; am. 2004, ch. 308, § 10, p. 858;

am. 2007, ch. 197, § 6, p. 597; am. 2013, ch.

101, § 1, p. 242.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 101, in paragraph (4)(c), substituted "HVAC certification" for "HVAC license" in the introductory para-

graph, substituted "Fuel piping" for "Gas piping and piping for hydronic systems" in paragraph (ii), and added paragraphs (iii) and (iv).

CHAPTER 51

NATUROPATHIC PHYSICIANS LICENSING ACT

SECTION.

54-5110. Naturopathic medical formulary council established.

54-5110. Naturopathic medical formulary council established. —

There is hereby established a naturopathic medical formulary council, which is separate and distinct from the board, to be composed of seven (7) members. Two (2) members shall be naturopathic physicians licensed under this chapter and appointed by the board of naturopathic medical examiners. Three (3) members shall be pharmacists licensed under chapter 17, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of pharmacy. Two (2) members shall be physicians licensed under chapter 18, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of medicine. The initial council shall be appointed as follows: One (1) naturopathic physician shall be appointed for a one (1) year term; one (1) physician licensed under chapter 18, title 54, Idaho Code, and one (1) pharmacist shall be appointed for a two (2) year term; and two (2) pharmacists, one (1) naturopathic physician and one (1) physician licensed under chapter 18, title 54, Idaho Code, shall be appointed for a three (3) year term. Thereafter, the term of office shall be three (3) years. A quorum shall consist of five (5) members and shall be required for any vote to be taken. It shall be the duty of the naturopathic medical formulary council to establish a formulary for use by naturopathic physicians, and immediately upon adoption or revision of the formulary, the council shall transmit the approved formulary to the board, which shall adopt the formulary by temporary rule. The formulary will be reviewed annually by the council, or at any time at the request of the board. The formulary list may not go beyond the scope of prescription medicines and medical devices covered by approved naturopathic medical education and training and existing naturopathic medical formularies, or board-approved continuing education. The naturopathic medical formulary shall not include medicines and devices that are inconsistent with the training provided by approved naturopathic medical colleges. Nothing herein shall allow a naturopathic physician to dispense, administer or prescribe any prescription drug as defined in section 54-1705(36), Idaho Code, or medical device unless such prescription drug or medical device is specifically included in the naturopathic medical formulary.

History.

I.C., § 54-5110, as added by 2005, ch. 329, § 1, p. 1026; am. 2006, ch. 290, § 5, p. 888; am. 2009, ch. 244, § 7, p. 748; am. 2011, ch.

135, § 7, p. 375; am. 2013, ch. 28, § 17, p. 52; am. 2013, ch. 270, § 7, p. 698; am. 2014, ch. 146, § 9, p. 391.

STATUTORY NOTES**Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 28, updated the reference near the middle of the last sentence in light of the 2013 amendment of § 54-1705.

The 2013 amendment, by ch. 270, updated the reference in the last sentence in light of the 2013 amendment of § 54-1705.

The 2014 amendment, by ch. 146, updated a reference in the last sentence in light of the 2014 amendment of § 54-1705.

CHAPTER 52**IDAHO CONTRACTOR REGISTRATION ACT****54-5202. Declaration of policy.****JUDICIAL DECISIONS**

Cited in: Stonebrook Constr., LLC v. Chase Home Fin., LLC, 152 Idaho 927, 277 P.3d 374 (2012).

54-5203. Definitions.**JUDICIAL DECISIONS**

Cited in: Stonebrook Constr., LLC v. Chase Home Fin., LLC, 152 Idaho 927, 277 P.3d 374 (2012); AED, Inc. v. KDC Invs., LLC, — Idaho —, 307 P.3d 176 (2013).

54-5204. Registration required.**JUDICIAL DECISIONS****Failure to Register.**

Construction company, operating as a limited liability company, was precluded from placing a mechanics' lien against property under § 54-5208, because it did not properly register under this section. *Stonebrook Constr., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 277 P.3d 374 (2012).

Contractor's unlicensed status under West Virginia law at the time of bid submission rendered a contract for its demolition services in West Virginia illegal and unenforceable under Idaho law, even though it obtained a contractor's license before performing any work. *AED, Inc. v. KDC Invs., LLC*, — Idaho —, 307 P.3d 176 (2013).

54-5208. Denial of lien rights.**JUDICIAL DECISIONS****Eligibility for Lien.**

Construction company, operating as a limited liability company, was precluded from placing a mechanics' lien against property

under this section, because it did not properly register under § 54-5204. *Stonebrook Constr., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 277 P.3d 374 (2012).

54-5217. Penalties.**JUDICIAL DECISIONS****Eligible to Maintain Action.**

Construction company, operating as a limited liability company, was precluded from placing a mechanics' lien against property under § 54-5204, because it did not properly register under § 54-5204. Stonebrook

Constr., LLC v. Chase Home Fin., LLC, 152 Idaho 927, 277 P.3d 374 (2012).

Cited in: AED, Inc. v. KDC Invs., LLC, — Idaho —, 307 P.3d 176 (2013).

CHAPTER 54

DRIVING BUSINESSES

SECTION.

54-5403. Board — Terms of members — Qualifications — Powers and duties — Meetings — Compensation.

SECTION.

54-5406. Driving instructors — Requirements.

54-5403. Board — Terms of members — Qualifications — Powers and duties — Meetings — Compensation. — (1) A driving businesses licensure board is hereby established in the department of self-governing agencies whose duty it shall be to administer the provisions of this chapter.

(2) The board shall consist of five (5) members appointed by the governor. The governor may consider recommendations for appointment to the board from the Idaho association of professional driving businesses, any association of driving businesses or from any individual residing in this state. The board shall consist of four (4) members who are licensed under this chapter and one (1) member of the public who has been a customer of private driver education. At least one (1) member shall be a driving business owner.

(3) Members shall serve at the pleasure of the governor. Board members shall be appointed for a term of three (3) years. No member of the board may be appointed to more than two (2) consecutive terms. Members of the board shall hold office until the expiration of the term for which they were appointed and until their successors have been appointed and qualified. In the event of a vacancy other than expiration of a term, the governor shall appoint a replacement to fill the vacancy for the remainder of the unexpired term.

(4) Members of the board shall be citizens of the United States and residents of this state and shall never have been the subject of a disciplinary action under the provisions of section 54-5409, Idaho Code.

(5) The board shall:

(a) Enforce the minimum standards and requirements as provided in this chapter and by rule adopted by the board. The board may promulgate such rules, in compliance with chapter 52, title 67, Idaho Code, as may be necessary to carry out the provisions of this chapter in order to effectuate the purposes herein and for the orderly and efficient administration thereof, except as may be limited or prohibited by law and the provisions of this chapter;

(b) Accept or reject applications for licensing, business and instruction,

and establish the fees to be charged for original application and renewal, subject to the provisions of this chapter;

(c) Hold and attend public meetings and furnish copies of information to those engaged in the business and to the public upon request;

(d) Review and approve instructor training curriculum and programs;

(e) Contract with the bureau of occupational licenses to provide administrative services;

(f) Include a link on the bureau of occupational licenses's; website to current curriculum components offered by private driver education businesses; and

(g) Adopt rules providing for continuing education.

(6) The board shall have the authority to conduct inspections and audits of any licensed driving business or any licensed instructor to ensure compliance with the laws and rules of the board. Failure to cooperate with an inspection or audit may constitute grounds for disciplinary action.

(7) The board shall meet at such times as may be expedient and necessary for the proper performance of its duties, but it shall not meet less than once per year.

(8) The members shall elect annually one (1) of their number to be chairman. The chairman may serve in such capacity for a one (1) year term and may not serve in such capacity for more than two (2) consecutive terms.

(9) A majority of the board shall constitute a quorum for the transaction of business.

(10) Each member of the board shall be compensated as provided by section 59-509(k), Idaho Code.

History.

I.C., § 54-5403, as added by 2009, ch. 251,

§ 2, p. 765; am. 2010, ch. 145, § 1, p. 306; am. 2014, ch. 157, § 1, p. 439.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 157, in subsection (2), substituted "are licensed under this chapter" for "have been in the driving business for at least five (5) years" in the third sentence and added the last sentence; in subsection (3), deleted "begin their terms on July 1, 2009, and" following "shall" in the first sentence and deleted the former second sentence, which read: "Terms shall initially be staggered as follows: one (1) member whose term expires July 1, 2010; two (2) members whose terms expire July 1, 2011; and two (2) members whose terms expire July 1, 2012"; in subsection (4), deleted "who are driving business owners" following "the board" and "and

they shall have been licensed driving business owners with a minimum of five (5) years of continuous licensing prior to being nominated" following "this state"; deleted "within thirty (30) days after the appointment of its members and thereafter" following "shall meet" in subsection (7); and rewrote the first sentence in subsection (8), which formerly read: "At the board's first meeting, the members shall elect one (1) of their number to be chairman and then shall elect a chairman annually thereafter".

Effective Dates.

Section 3 of S.L. 2014, ch. 157 declared an emergency. Approved March 19, 2014.

54-5406. Driving instructors — Requirements. — (1) Each person applying for a driving instructor license must complete an application provided by the bureau of occupational licenses that requires the applicant to be at least twenty-one (21) years of age, have written evidence of graduation from a high school, an accredited college or university or a GED,

a valid driver's license and a satisfactory driving record from the jurisdiction from which the license was issued, a satisfactory fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database, a medical certificate and any required completed coursework. Licensees shall certify that they hold a current medical certificate at the time of license renewal.

(2) Every new applicant for a license pursuant to this chapter shall have completed a board approved apprenticeship training program of not less than sixty (60) hours of classroom instruction and one hundred eight (108) hours of behind-the-wheel training. The board may waive, as a whole or either part, the apprenticeship for an applicant who holds a current, active and unrestricted equivalent instructor license from another state or who has the requisite training and experience as demonstrated in a manner established by board rule. Such applicant shall submit supporting documentation with the completed application and shall meet all other requirements in this chapter and in board rule.

(3) If the board granted any instructor a license without the satisfactory fingerprint-based criminal history check as provided in subsection (1) of this section, such licensee shall obtain and submit the required fingerprint-based criminal history check to the board on or before the date of the licensee's first renewal.

History.

I.C., § 54-5406, as added by 2009, ch. 251, § 2, p. 765; am. 2010, ch. 145, § 3, p. 306; am.

2014, ch. 157, § 2, p. 439.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 157, in subsection (2), deleted "On and after July 1, 2010" at the beginning and added the last two sentences; and deleted "occurring after the effective date of this act" at the end of subsection (3).

sentence of subsection (1), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjis/iafis.htm>.

Compiler's Notes.

The federal bureau of investigation criminal history database, referred to in the second

Effective Dates.

Section 3 of S.L. 2014, ch. 157 declared an emergency. Approved March 19, 2014.

CHAPTER 55**MIDWIFERY****SECTION.**

54-5502. Definitions. [Null and void, effective July 1, 2024.]

SECTION.

54-5505. Rulemaking. [Null and void, effective July 1, 2024.]

54-5501. Legislative purpose and intent. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended

by S.L. 2014, ch. 161, § 3 provided "The provisions of Section 1 of this act shall be null,

void and of no force and effect on and after July 1, 2024."

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21

of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2024."

54-5502. Definitions. [Null and void, effective July 1, 2024.] — As used in this chapter:

- (1) "Board" means the Idaho state board of midwifery.
- (2) "Bureau" means the Idaho state bureau of occupational licenses.
- (3) "Certified professional midwife" or "CPM" means a person who is certified by the North American registry of midwives or any successor organization.
- (4) "Client" means a woman under the care of a licensed midwife, as well as her fetus and newborn child.
- (5) "Estimated due date" means the estimated date of delivery with a known date of conception, known date of last menstrual period or first trimester ultrasound.
- (6) "Idaho midwifery council" or "IMC" means the professional organization representing midwives in Idaho.
- (7) "Idahoans for midwives" or "IFM" means the Idaho consumer organization that promotes and supports midwifery care in Idaho.
- (8) "Licensed health care provider" means a physician or physician assistant or an advanced practice registered nurse.
- (9) "Licensed midwife" means a person who holds a current license issued by the board pursuant to the provisions of this chapter to engage in the practice of midwifery, who shall be designated "L.M."
- (10) "Midwifery education accreditation council" or "MEAC" means the organization established in 1991 and recognized by the U.S. department of education as an accrediting agency for midwifery education programs and institutions.
- (11) "National association of certified professional midwives" or "NACPM" means the national organization for certified professional midwives.
- (12) "NACPM essential documents" means the documents adopted by NACPM that identify the nature of and standards of practice for responsible midwifery practice.
- (13) "North American registry of midwives" or "NARM" means the international certification agency that establishes and administers certification for the CPM credential.
- (14) "Practice of midwifery" means providing maternity care for women and their newborns during the antepartum, intrapartum and postpartum periods. The postpartum period for both maternal and newborn care may not exceed six (6) weeks from the date of delivery.

History.

I.C., § 54-5402, as added by 2009, ch. 65,

§ 1, p. 177; am. and redesign. 2010, ch. 79,

§ 22, p. 133; am. 2014, ch. 161, § 1, p. 450.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 161, inserted present subsections (5) and (8) and redesignated the subsequent subsections accordingly.

Compiler's Notes.

For more on the North American registry of midwives, see <http://narm.org>.

For more on the Idaho midwifery council, see <http://idahomidwives.org>.

For more on the midwifery education accreditation council, see <http://www.meacschools.org>.

For more on the national association of certified professional midwives, see <http://nacpm.org>.

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024."

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2024."

54-5503. Board of midwifery created. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024."

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2024."

54-5504. Board of midwifery — Powers and duties. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024."

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2024."

54-5505. Rulemaking. [Null and void, effective July 1, 2024.] —

(1) The rules adopted by the board shall:

- (a) Allow a midwife to obtain and administer, during the practice of midwifery, the following:
 - (i) Oxygen;
 - (ii) Oxytocin and cytotec as postpartum antihemorrhagic agents;
 - (iii) Injectable local anesthetic for the repair of lacerations that are no more extensive than second degree;
 - (iv) Antibiotics to the mother for group b streptococcus prophylaxis consistent with guidelines of the United States centers for disease control and prevention;
 - (v) Epinephrine to the mother administered via a metered dose auto-injector;
 - (vi) Intravenous fluids for stabilization of the woman;
 - (vii) Rho(d)immune globulin;

- (viii) Vitamin K; and
- (ix) Eye prophylactics to the baby.

(b) Prohibit the use of other legend drugs, except those of a similar nature and character as determined by the board to be consistent with the practice of midwifery; provided that, at least one hundred twenty (120) days' advance notice of the proposal to allow the use of such drugs is given to the board of pharmacy and the board of medicine and neither board objects to the addition of such drugs to the midwifery formulary;

(c) Define a protocol for use by licensed midwives of drugs approved in paragraphs (a) and (b) of this subsection that shall include methods of obtaining, storing and disposing of such drugs and an indication for use, dosage, route of administration and duration of treatment;

(d) Define a protocol for medical waste disposal; and

(e) Establish scope and practice standards for antepartum, intrapartum, postpartum and newborn care that shall, at a minimum:

- (i) Prohibit a licensed midwife from providing care for a client with a history of disorders, diagnoses, conditions or symptoms that include:
 1. Placental abnormality;
 2. Multiple gestation, except that midwives may provide antepartum care that is supplementary to the medical care of the physician overseeing the pregnancy, so long as it does not interfere with the physician's recommended schedule of care;
 3. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first;
 4. Birth under thirty-seven and zero-sevenths (37 0/7) weeks and beyond forty-two and zero-sevenths (42 0/7) weeks gestational age;
 5. A history of more than one (1) prior cesarean section, a cesarean section within eighteen (18) months of the estimated due date or any cesarean section that was surgically closed with a classical or vertical uterine incision;
 6. Platelet sensitization, hematological or coagulation disorders;
 7. A body mass index of forty (40.0) or higher at the time of conception;
 8. Prior chemotherapy and/or radiation treatment for a malignancy;
 9. Previous pre-eclampsia resulting in premature delivery;
 10. Cervical insufficiency;
 11. HIV positive status; or
 12. Opiate use that places the infant at risk of neonatal abstinence syndrome.
- (ii) Prohibit a licensed midwife from providing care for a client with a history of the following disorders, diagnoses, conditions or symptoms unless such disorders, diagnoses, conditions or symptoms are being treated, monitored or managed by a licensed health care provider:
 1. Diabetes;
 2. Thyroid disease;
 3. Epilepsy;
 4. Hypertension;
 5. Cardiac disease;

6. Pulmonary disease;
7. Renal disease;
8. Gastrointestinal disorders;
9. Previous major surgery of the pulmonary system, cardiovascular system, urinary tract or gastrointestinal tract;
10. Abnormal cervical cytology;
11. Sleep apnea;
12. Previous bariatric surgery;
13. Hepatitis;
14. History of illegal drug use or excessive prescription drug use; or
15. Rh or other blood group disorders and a physician determines the pregnancy can safely be attended by a midwife.

(iii) Require a licensed midwife to recommend that a client see a physician licensed under chapter 18, title 54, Idaho Code, or under an equivalent provision of the law of a state bordering Idaho and to document and maintain a record as required by section 54-5511, Idaho Code, if such client has a history of disorders, diagnoses, conditions or symptoms that include:

1. Previous complicated pregnancy;
2. Previous cesarean section;
3. Previous pregnancy loss in second or third trimester;
4. Previous spontaneous premature labor;
5. Previous pre-term rupture of membranes;
6. Previous pre-eclampsia;
7. Previous hypertensive disease of pregnancy;
8. Parvo;
9. Toxo;
10. CMV;
11. HSV;
12. Previous maternal/newborn group b streptococcus infection;
13. A body mass index of at least thirty-five (35.0) but less than forty (40.0) at the time of conception;
14. Underlying family genetic disorders with potential for transmission; or
15. Psychosocial situations that may complicate pregnancy.

(iv) Require that a licensed midwife shall facilitate the immediate transfer to a hospital for emergency care for disorders, diagnoses, conditions or symptoms that include:

1. Maternal fever in labor;
2. Suggestion of fetal jeopardy such as bleeding or meconium or abnormal fetal heart tones;
3. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first, unless imminent delivery is safer than transfer;
4. Second stage labor after two (2) hours of initiation of pushing when the mother has had a previous cesarean section;
5. Current spontaneous premature labor;
6. Current pre-term premature rupture of membranes;

7. Current pre-eclampsia;
8. Current hypertensive disease of pregnancy;
9. Continuous uncontrolled bleeding;
10. Bleeding which necessitates the administration of more than two (2) doses of oxytocin or other antihemorrhagic agent;
11. Delivery injuries to the bladder or bowel;
12. Grand mal seizure;
13. Uncontrolled vomiting;
14. Coughing or vomiting of blood;
15. Severe chest pain; or
16. Sudden onset of shortness of breath and associated labored breathing.

A transfer of care shall be accompanied by the client's medical record, the licensed midwife's assessment of the client's current condition and a description of the care provided by the licensed midwife prior to transfer;

(v) Establish a written plan for the emergency transfer and transport required in subparagraph (iv) of this paragraph and for notifying the hospital to which a client will be transferred in the case of an emergency. If a client is transferred in an emergency, the licensed midwife shall notify the hospital when the transfer is initiated and accompany the client to the hospital if feasible, or communicate by telephone with the hospital if unable to be present personally, and shall provide the client's medical record. The record shall include the client's name, address, list of diagnosed medical conditions, list of prescription or over the counter medications regularly taken, history of previous allergic reactions to medications, if feasible the client's current medical condition and description of the care provided by the midwife and next of kin contact information. A midwife who deems it necessary to transfer or terminate care pursuant to this section and any rules promulgated under this section or for any other reason shall transfer or terminate care and shall not be regarded as having abandoned care or wrongfully terminated services. Before nonemergent discontinuing of services, the midwife shall notify the client in writing, provide the client with names of licensed physicians and contact information for the nearest hospital emergency room and offer to provide copies of medical records regardless of whether copying costs have been paid by the client.

(f) Establish and operate a system of peer review for licensed midwives that shall include, but not be limited to, the appropriateness, quality, utilization and the ethical performance of midwifery care.

(2) The rules adopted by the board may not:

- (a) Require a licensed midwife to have a nursing degree or diploma;
- (b) Except as a condition imposed by disciplinary proceedings by the board, require a licensed midwife to practice midwifery under the supervision of another health care provider;
- (c) Except as a condition imposed in disciplinary proceedings by the board, require a licensed midwife to enter into an agreement, written or otherwise, with another health care provider;

- (d) Limit the location where a licensed midwife may practice midwifery;
- (e) Allow a licensed midwife to use vacuum extraction or forceps as an aid in the delivery of a newborn;
- (f) Grant a licensed midwife prescriptive privilege;
- (g) Allow a licensed midwife to perform abortions.

History.

I.C., § 54-5405, as added by 2009, ch. 65,

§ 1, p. 177; am. and redesign. 2010, ch. 79, § 25, p. 133; am. 2014, ch. 161, § 2, p. 450.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 161, in paragraph (1)(a), inserted “and cytotec” in paragraph (ii) and inserted “to the mother” in paragraphs (iv) and (v); in paragraph (1)(e)(i), added the exception in paragraph 2., rewrote paragraph 4., which read: “Birth under thirty-seven (37) weeks and after forty-two (42) completed weeks’ gestational age”, substituted “estimated due date” for “current delivery” in paragraph 5., deleted “Rh or other blood group or” at the beginning of paragraph 6., and added paragraph 12.; in paragraph (1)(e)(ii), substituted “licensed health care provider” for “physician licensed pursuant to chapter 18, title 54, Idaho Code” in the introductory language and added paragraph 15.; inserted “or under an equivalent provision of

the law of a state bordering Idaho” in paragraph (1)(e)(iii); inserted “unless imminent delivery is safer than transfer” in paragraph (1)(e)(iv); and added the last two sentences in paragraph (1)(e)(v).

Compiler’s Notes.

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024.”

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2024.”

54-5506. Licensure — Penalty. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler’s Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024.”

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2024.”

54-5507. Qualifications for licensure. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler’s Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024.”

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2024.”

54-5508. Exemptions. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024.”

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2024.”

54-5509. Fees. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024.”

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2024.”

54-5510. Client protection — Unprofessional conduct. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024.”

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2024.”

54-5511. Disclosure and recordkeeping — License renewal. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024.”

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2024.”

54-5512. Immune from vicarious liability. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024.”

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2024.”

54-5513. Severability. [Null and void, effective July 1, 2024.]**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2009, ch. 65, as amended by S.L. 2014, ch. 161, § 3 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2024."

Section 37 of S.L. 2010, ch. 79, as amended by S.L. 2014, ch. 161, § 4 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2024."

